United Nations A/HRC/30/33

General Assembly

Distr.: General
24 August 2015
English
Original: French

Human Rights Council
Thirtieth session
Agenda items 2 and 10
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Study on the impact of technical assistance and capacity-building on the human rights situation in the Democratic Republic of the Congo (2008-2014)

Report of the United Nations

Summary

The present study is submitted pursuant to Human Rights Council resolution A/HRC/RES/27/27 of 26 September 2014, in which the Office of the United Nations High Commissioner for Human Rights was requested to "commission a study on the impact of technical assistance and capacity-building on the human rights situation in the Democratic Republic of the Congo and to submit the report at its thirtieth session within the framework of an interactive dialogue". It is based on activities conducted throughout the country between 2008 and the end of 2014 by the United Nations and international NGOs, with the support of Member States.

During the period under consideration, the technical assistance provided by the international community made it possible to achieve significant legislative and institutional progress and improved conduct on the part of duty bearers and rights holders.

The country's legal framework has evolved, notably with the adoption in 2013 of an Institutional Act giving courts of appeal jurisdiction over crimes of genocide, war crimes and crimes against humanity.

Institutional developments in the area of human rights include the establishment of the human rights liaison entity and the Human Rights Defenders Protection Unit. The National Human Rights Commission was set up in 2013 and its members were appointed in 2015.

The fact that victims of sexual violence have gradually become aware of their need for justice and assistance has helped to combat impunity for crimes under international law and sexual and gender-based violence committed by senior officers of the defence and security forces and by armed groups. A growing number of members of those forces and groups have been found guilty of massacres, sexual

GE.15-14279 (E) 170915 180915

Please recycle

violence and looting, and have been given sentences including life imprisonment.

Capacity-building for the defence and security forces and civil society, together with increased monitoring of human rights by civil society and the United Nations, the publication of reports, advocacy and the above-mentioned sentences have all helped to raise the authorities' awareness of their duties and to reduce the number of human rights violations.

The protection mechanisms set up in areas subject to armed attack in the east of the country have helped provide better protection for the civilian population.

Despite the positive impact of the technical assistance provided by the international community in the area of human rights, many problems remain. Impunity is still a major concern. Remaining challenges related to the legal framework include the fact that important legislation aimed at protecting human rights, and specifically concerning human rights defenders, sex equality and gender, has not yet been adopted.

There are conflicts of mandate between institutions, for instance, between the National Human Rights Commission and the human rights liaison entity, and there is still no national mechanism for the prevention of torture, despite the fact that the Democratic Republic of the Congo is a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Most interventions by the international community have concentrated on the east of the country and have generally been short-term, which has not helped to produce sustainable outcomes.

Contents

		Page
	Abbreviations	4
I.	Introduction	5
II.	Scope of the study	5
III.	Methodology	6
IV.	Main interventions by the international community	6
	A. Support for the administration of justice in combating impunity	7
	B. Strengthening the national system for protection of human rights and collaboration with the international human rights mechanisms	11
	C. Protection of civilians in armed conflict	13
	D. Economic and social rights	15
V.	Gender mainstreaming	17
VI.	Conclusion	17
VII.	Recommendations	18
	A. To the Government	18
	B. To the United Nations Joint Human Rights Office and the United Nations country team	18
	C. To the international community	18

Abbreviations

FARDC	Armed Forces of the Democratic Republic of the Congo
GPRSP	Growth and Poverty Reduction Strategy Paper
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
NGO	non-governmental organization
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSISA	Open Society Initiative for Southern Africa
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNJHRO	United Nations Joint Human Rights Office
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	universal periodic review

I. Introduction

1. The Human Rights Council, in resolution A/HRC/RES/27/27 of 26 September 2014, called upon the Office of the United Nations High Commissioner for Human Rights (OHCHR) to commission a study on the impact of technical assistance and capacity-building on the human rights situation in the Democratic Republic of the Congo.

2. Based on a review of the action taken by the United Nations and international non-governmental organizations (NGOs) with respect to the promotion and protection of human rights, the study evaluates the progress achieved as a result of these activities, as well as its limits with regard to the human rights situation in the Democratic Republic of the Congo. It covers the period from 2008 to 2014, with the beginning of the year 2008 marking the start of the first United Nations Development Assistance Framework (UNDAF) with a post-crisis perspective after the presidential election of 2006.

3. The study aims to measure the following elements:

- The relevance of action taken by the international community with respect to human rights;
- The effectiveness of such action in terms of results;
- The impact of technical assistance on the enjoyment of human rights;
- The inclusion of gender mainstreaming in all areas.

II. Scope of the study

4. The study takes into account the 2008-2012 cycle and half of the 2013-2017 cycle of UNDAF, the country programmes of the different specialized institutions of the United Nations and those of international NGOs.

5. It should be noted that UNDAF is aligned to the Government's priorities with respect to governance and human rights as outlined in the national Growth and Poverty Reduction Strategy Paper (GPRSP).

6. The priorities with respect to human rights, which are set out in the 2006 and the 2011-2015 GPRSPs, are the following: improving the legal framework and access to justice; training magistrates and court officers and creating a national judicial training college; establishing an institution for the coordination of human rights affairs; disseminating human rights conventions; improving conditions of detention; improving the protection of vulnerable groups; and ensuring better management and development of natural resources.

7. Four main themes emerge from the programme documents of some stakeholders and from meetings with them and with the national authorities; they group the main aspects of work related to human rights in the country:

- Supporting the administration of justice in order to combat impunity;
- Strengthening the national system for the protection of human rights and collaboration with international human rights mechanisms;
- Protecting civilians in armed conflict;
- Promoting economic and social rights.

III. Methodology

8. The study was carried out over three months by an OHCHR staff member deployed in the Democratic Republic of the Congo, with institutional support provided by a reference group composed of OHCHR, the United Nations Joint Human Rights Office (UNJHRO)[1] and the United Nations Integrated Office in the Democratic Republic of the Congo.

9. The study is based on the following methodology:

- Inspection of various documents (in particular studies, reports, legislation and programme documents);
- Discussions with members of local civil society to gain an understanding of how they interpret the action taken by international organizations;
- Submission of questionnaires to the principal actors from the United Nations, government authorities and international NGOs in Kinshasa and the provinces;
- E-mail exchanges with stakeholders that are not resident in the Democratic Republic of the Congo;
- Observer missions to Bas-Congo (Mbanza-Ngungu, Kimbemba and Lamba) on income-generating activities and assistance to returned migrants; to Katanga (Kalemie and Lubumbashi) on governance with respect to the exploitation of natural resources and the protection of indigenous populations; to North Kivu (Goma) on protection of civilians, combating sexual violence and care for children demobilized by armed groups and victims of sexual violence; and to South Kivu (Bukavu) on holistic care for victims of sexual violence. Visits were made to the legal clinic at Mungunga, the War Child UK helpline centre in North Kivu and the Panzi Foundation in South Kivu.

10. The following difficulties were encountered in conducting the study:

- Lack of responses to requests for meetings and to questionnaires from some key focal points;
- Unavailability of documentation and of comprehensive detailed data on the action taken by the international community throughout the period under consideration;
- Lack of institutional memory because of certain international actors having moved elsewhere;
- Inaccessibility of some locations in the west of the country (Equateur, Maniema, Kasaï) due to the halt in air traffic following the gradual withdrawal of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO);
- The relatively short length of time allocated to carry out the study.

IV. Main interventions by the international community

11. Since 1996, the Democratic Republic of the Congo has suffered a series of wars that have caused political instability and insecurity, economic failure and a

[1] UNJHRO was established in 2008 following the merger of the OHCHR office in the Democratic Republic of the Congo (created in 1996) and the human rights component of the United Nations Organization Mission in the Democratic Republic of the Congo.

considerable delay in the country's development. This situation has led to chronic humanitarian crises and grave violations of human rights, in particular sexual and gender-based violence.

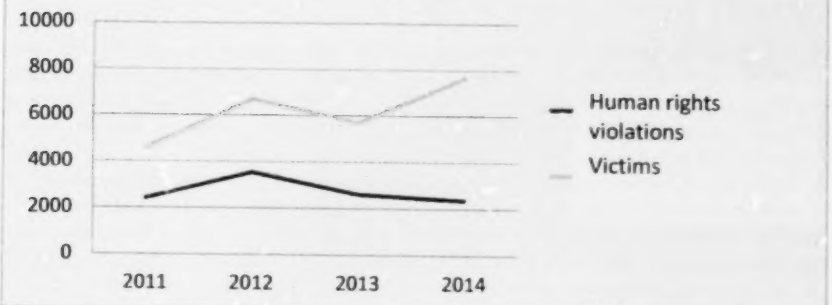
12. In response, the international community has taken significant measures in the field of human rights. These have involved numerous international NGOs, MONUSCO, whose human rights mandate is implemented by UNJHRO, and the United Nations Programme Management Team (PMT).[2]

A. Support for the administration of justice in combating impunity

13. The political instability and insecurity in the country led to serious crimes and mass violations of human rights by defence and security forces and by armed groups. They included extrajudicial killings, arbitrary arrests, sexual and gender-based violence, property crime and forced labour.

14. In the absence of comprehensive data on the period under consideration, the chart below shows the evolution of human rights violations and the number of victims of those violations between 2011 and 2014.

Chart 1: Evolution of human rights violations and victims



Source: Data from UNJHRO

15. The above chart shows a slight decrease in the number of cases of human rights violations during the period in question but a marked increase in the number of victims. In total, 21,940 victims were recorded by UNJHRO between 2011 and 2014, of whom 14,851 were men, 4,149 were women and 2,940 were children. Victims of sexual violence were among the victims for whom comprehensive care was provided.

1. Holistic care for victims of sexual and gender-based violence

16. In 2008, in her report on the promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development (A/HRC/7/6/Add.4), the Special Rapporteur on violence against women, its causes and consequences, noted that survivors of rape in the Democratic Republic of the Congo lacked appropriate care and were denied the compensation to which they were entitled under international and Congolese law.

[2] The Programme Management Team is composed of approximately 20 entities — funds, programmes and resident and non-resident agencies.

17. The combined efforts of the American Bar Association, Avocats sans frontières, UNJHRO, Cordaid, the United Nations Children's Fund (UNICEF), the United Nations Population Fund (UNFPA), the International Center for Transitional Justice, UN-Women, the Open Society Initiative for Southern Africa (OSISA), Physicians for Human Rights, the United Nations Development Programme (UNDP) and Track Impunity Always (Trial), supported by a number of Member States, enabled 89 itinerant hearings to be organized by military and civil courts in the provinces of Bas-Congo, Equateur, Kasaï-oriental, Katanga, North Kivu, Orientale, South Kivu and Kinshasa between 2008 and 2014. The advocacy efforts of the international community with respect to combating impunity for sexual violence were reinforced by the mandates of the Special Representative of the Secretary-General on Sexual Violence in Conflict and the Team of Experts on the Rule of Law and Sexual Violence in Conflict.

18. In 2013, UNJHRO provided legal assistance free of charge to 1,507 victims of sexual violence in 12 legal clinics and 25 legal aid centres (throughout the country apart from Orientale province), with funding from the Canadian International Development Agency, the Swedish International Development Cooperation Agency, Belgium, Brazil and UK Aid.

19. According to figures from MONUSCO, there was a gradual increase in the number of judgements issued with respect to sexual violence in comparison with the total number of judgements issued by national courts between 2009 and 2014: from 14 per cent (2009/2010), to 17 per cent (2010/2011), 22 per cent (2011/2012), 25 per cent (2012/2013) and 23 per cent (2013/2014).

20. During the period in question, around 33,057 victims [3] of sexual violence benefited from holistic care comprising legal, medical, psychosocial and social and economic assistance provided by UNJHRO, UN-Women, OSISA, UNFPA and UNICEF, often through local NGOs. In 2010, following work by the Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo, UNJHRO and UNFPA provided joint social and economic assistance to 30 women who were victims of sexual violence in Songo-Mboyo (Equateur province). At their request, they were given a boat for transporting fish so that they could sell their merchandise, together with training in managing it. Thanks to the advocacy of the international community, in 2014 for the first time, the Government of the Democratic Republic of the Congo granted reparations to 30 victims from Songo-Mboyo.[4]

2. Strengthening the administration of justice

21. In 2006, the Growth and Poverty Reduction Strategy Paper diagnosed the judicial system as being ineffective and resulting in individuals resorting to extrajudicial conflict resolution procedures, court decisions not being enforced and people harbouring a deep mistrust in the justice system.

22. In his report of 2008 on the promotion and protection of all human rights, civil, political, economic, social and cultural, including the right to development (A/HRC/8/4/Add.2), the Special Rapporteur on the independence of judges and lawyers noted that there was no judicial training college, nor any adequate training for judges, which meant that their judgements were unreliable. He recommended

[3] Data gathered from MONUSCO performance reports from 2009 to 2014.

[4] In December 2003, FARDC soldiers committed mass rapes of women and girls in Songo-Mboyo. The final rulings on appeal were handed down in 2007 by the military tribunal in the garrison of Mbandaka sitting in itinerant hearing at Songo-Mboyo.

strengthening the training of judges and court officers with respect to ethics, professional conduct and international human rights standards.

23. Between 2008 and 2014, international stakeholders trained more than 25,000 court and prison personnel (civilian and military), of whom approximately 10 per cent were women, in all the country's provinces on the legal processes regarding crimes under international law, sexual violence and other human rights violations, forensic examination, combating torture and management of cases concerning children in conflict with the law.

24. The lack of coordination between the various international stakeholders and between them and the Government, the absence of any sectoral policy or strategic plan with respect to human rights as well as the lack of a judicial training college have led to a duplication of capacity-building activities for staff of the justice system. Thus, some of them have followed a number of similar training sessions organized by different partners.

25. Between 2008 and 2014, the international community provided support in trials brought for crimes under international law and grave human rights violations by protecting and caring for victims, witnesses and their lawyers and facilitating the travel of judicial personnel. As a result of those trials, 582 members of the Armed Forces of the Democratic Republic of the Congo (FARDC) and 367 members of the national police force[5] were sentenced to between 3 and 20 years in prison. In accordance with the Rome Statute of the International Criminal Court, the justice system sentenced commanders and other senior officers of the defence and security forces and members of armed groups, marking an important step in the fight against impunity. Among these emblematic cases were the following:

- On 15 December 2014, the military court of South Kivu sentenced Colonel Engangela, also known as "colonel 106", to rigorous imprisonment for life and 20 years of penal servitude for crimes against humanity, torture, kidnapping and sexual slavery committed against approximately 1,200 victims in South Kivu between 2005 and 2007;
- On 9 August 2010, the military tribunal of the garrison of Bunia sentenced Bernard Kakodo, commander of the Forces de résistance patriotiques en Ituri armed group, to life imprisonment for crimes against humanity following mass killings of civilians, rape, slavery and pillage in Bunia (Orientale province) in 2002;
- On 4 June 2009, the military tribunal of the garrison of Kisangani sentenced Colonel Thom's, commander of the Maï-Maï militia group, to life imprisonment for crimes against humanity against approximately 135 women, of whom 8 were minors, in the village of Lieke Lesole, close to Kisangani (Orientale province), in 2007.

3. Capacity-building for the defence and security forces

26. In 2008, the Special Rapporteur on the independence of judges and lawyers expressed concern that 86 per cent of human rights violations in the Democratic Republic of the Congo were committed by police or military personnel.

27. In a bid to remedy that situation, UNJHRO assisted the Ministry of Justice and Human Rights, notably in implementing a national judicial framework with respect to detention. Between 2013 and 2014, UNJHRO and the Ministry visited national police detention facilities and prisons throughout the country. The advocacy of UNJHRO following these visits resulted in the release of 1,177 detainees for procedural

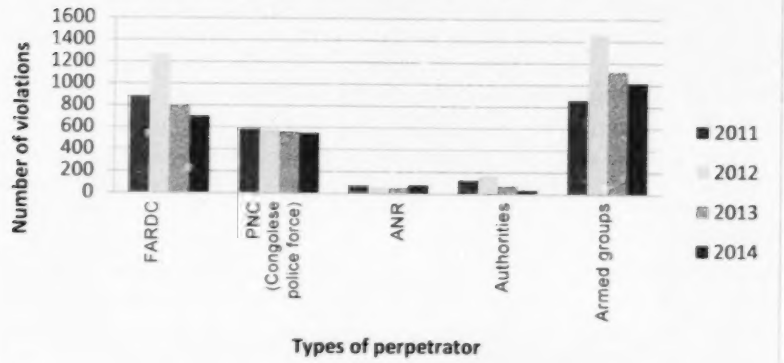
[5] UNJHRO database, 2011-2014

irregularities and illegal detention. In addition, with the assistance of UNJHRO, 17 senior law enforcement officers were arrested and 5 were removed from the national police force for serious human rights violations. Two illegal detention centres in Kinshasa and Kisangani were also closed in 2014.

28. From 2008 to 2014, in all provinces in the country, UNJHRO, MONUSCO and UNFPA trained around 421,856 members of FARDC, the national police force and the national intelligence agency in combating sexual violence and promoting respect for human rights and international humanitarian law. Together with UNICEF, they designed training modules on combating sexual violence and on international humanitarian law, which were added to the training programme of the national police force and FARDC.

29. The chart below shows a decrease in the number of human rights violations between 2011 and 2014, with 53 per cent of violations committed by members of FARDC or the national police force in 2014. This reduction can be attributed to the training they received and the trials of perpetrators of human rights violations. The peaks observed in 2012 are explained by a resurgence in the activities of armed groups in the east of the country.

Chart 2: Perpetrators of human rights violations



Source: UNJHRO data

30. Under the coordination of UNFPA, several partners such as UNJHRO, Heal Africa, the International Rescue Committee, Magna Enfants en Péril and UNICEF, with the support of Member States, created and subsequently handed to the Government (Ministry for Gender, the Family and Children) a database on acts of sexual violence committed between 2010 and 2014. The aim of this official database is to map and coordinate action by the international community in nine provinces. A major obstacle to updating the database is the reticence of certain partners to share information which they consider belongs to them.

31. Since 2012, UNJHRO has assisted the Ministry of Justice and Human Rights in consolidating the data on sentences handed out by national courts in cases of sexual violence. The assistance has consisted in developing tools for data collection, for data analysis and for the production of statistical reports. UNJHRO has placed material resources at the disposal of the Ministry and has assigned an expert to the Ministry to manage the database. Other actors from the United Nations, international NGOs and UNJHRO are finding it difficult to coordinate their efforts to provide similar

assistance to the Ministry. Improved coordination of the various interventions by the Ministry of Justice and Human Rights should produce a more positive outcome to this situation.

B. Strengthening the national system for protection of human rights and collaboration with the international human rights mechanisms

1. Ratification of international and regional conventions

32. As a result of the advocacy of international actors during the period in question, the Democratic Republic of the Congo has acceded to new international and regional human rights instruments:

- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (in June 2008), the African Charter on Democracy, Elections and Governance (in June 2008) and the African Charter on the Rights and Welfare of the Child (in February 2014);
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in September 2010);
- An act authorizing the ratification of the Convention on the Rights of Persons with Disabilities was voted on in 2013 and the ratification process is currently under way.

33. To date, the Democratic Republic of the Congo has still not become a party to the following instruments:

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The International Convention for the Protection of All Persons from Enforced Disappearance;
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- The Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

2. Submission of reports to the human rights treaty bodies and the universal periodic review and collaboration with the special procedures of the United Nations

34. In the report on her mission to the Democratic Republic of the Congo (A/HRC/13/22/Add.2) in 2009, the Special Rapporteur on the situation of human rights defenders recommended that the drafting methodology of the Interministerial Technical Committee on the drafting and follow-up to initial and periodic human rights reports should be improved to enable it to meet reporting obligations in a timely manner.

35. Between 2011 and 2012, the combined periodic reports to the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the Human Rights Committee were submitted with assistance received by the Interministerial Technical Committee from UNJHRO, UNPD and UNICEF.

36. Reports remain to be submitted to the Committee against Torture (due in 2009), the Committee on the Elimination of Racial Discrimination (due in 2011) and the Committee on Economic, Social and Cultural Rights (due in 2013).

37. In the framework of the country's participation in the universal periodic review (UPR) in 2009 and 2014, UNJHRO provided technical and financial assistance to the Interministerial Technical Committee to facilitate the submission of the State party reports. At the end of the second UPR cycle, the Government accepted 190 recommendations and took note of 39 others.[6] The support of UNJHRO made it possible to draft a plan for implementation of the recommendations, including with the help of funding from the Voluntary Fund for Financial and Technical Assistance.

38. During the period under consideration, the Democratic Republic of the Congo received 5 visits from special procedures[7] in addition to 11 visits recorded before 2008. OHCHR provided the necessary support for the organization of these visits.

39. Civil society organizations submitted alternative reports to the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the African Commission on Human and Peoples' Rights and to the UPR in 2014. Technical and financial assistance from UNJHRO, the Carter Center and the Centre for Civil and Political Rights in the Democratic Republic of the Congo contributed to the development of plans for implementation of the recommendations formulated by the above-mentioned bodies.

3. Legal and institutional framework

40. The 2009 report on the mission of the Special Rapporteur on the situation of human rights defenders highlights some shortcomings in the Congolese legal system, in particular the absence of laws protecting human rights defenders, limiting the jurisdiction of military courts to offences committed by members of the armed forces and the national police, in accordance with article 156 of the 2006 Constitution, and protecting victims and witnesses, in application of article 68 of the Rome Statute, which was ratified by the Democratic Republic of the Congo in 2002.

41. With the advocacy and technical assistance of the international community, the Government adopted important legislation and regulations, including Institutional Act No. 13/011B of 11 April 2013, on the organization, functioning and competence of the ordinary courts, which gives courts of appeal jurisdiction over crimes of genocide, war crimes and crimes against humanity, and Institutional Act No. 13/011 concerning the establishment, organization and operation of the National Human Rights Commission, adopted in 2013 in accordance with the Paris Principles.[8] Other laws were passed on establishing a juvenile justice system and recognizing torture as a crime. However, further efforts are required to achieve the adoption of more legislation, including on the protection of victims, witnesses and human rights defenders.

---

[6] The recommendations noted related in particular to the abolition of the death penalty, the passing of laws on protection of human rights defenders and accession to some instruments that had not yet been ratified.

[7] The Special Rapporteur on extrajudicial, summary or arbitrary executions (2009), the Special Rapporteur on the human rights of internally displaced persons (2008, 2009), the Special Rapporteur on the situation of human rights defenders (2009), the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights (2011).

[8] Principles relating to the status of national institutions for the promotion and protection of human rights approved by the General Assembly (resolution A/RES/48/134) on 20 December 1993. The members of the national human rights commission appointed in April 2015 were sworn in in July 2015.

42. The human rights liaison entity, established in 2009 and composed of national experts, UNJHRO and some international and local NGOs, is tasked with proposing the necessary guidance for the effective protection of human rights, ensuring the monitoring and implementation of the national plan for the promotion and protection of human rights and overseeing the drafting of initial and periodic reports on human rights. The human rights liaison entity has not been in operation since it was established although some members were appointed in 2010 and 2012. There is a conflict of jurisdiction between the human rights liaison entity and some aspects of the National Human Rights Commission, in particular with regard to examination of issues giving rise to human rights violations and proposals for solutions, as well as evaluation of national activities in the human rights sphere. This situation could create competition between the two institutions, in particular with respect to funding. The same is true for the National Commission for Preparation of and Follow-up to the Universal Periodic Review and the Interministerial Technical Committee, both of which are responsible for the submission of reports to the human rights mechanisms and for follow-up to their recommendations. Given that the National Commission has never been fully operational, its functions could be integrated into those of the Interministerial Technical Committee.

43. Technical assistance provided by Avocats sans Frontières, UNJHRO, Human Rights Watch and OSISA resulted in the adoption in 2011 of a ministerial decree establishing a unit for the protection of human rights defenders. This unit has difficulty in operating due to lack of adequate resources. In addition, the absence of legislation on the protection of human rights defenders is a barrier to their legal protection.

C. Protection of civilians in armed conflict

44. The activities of armed groups in the east of the country are a major threat to the protection of civilians and have resulted in numerous human rights violations and large-scale displacements of populations. Armed groups seeking to extend their influence and their control to rich territories do not hesitate to attack civilian populations. In addition, in the context of operations against these armed groups, members of the Congolese defence and security forces sometimes commit violations of human rights and international humanitarian law.

1. Protection of civilians

45. The security of people and their possessions has remained a concern in conflict zones and in zones recovering from conflict. In response to these challenges, the international community has contributed to the implementation of mechanisms for the protection of civilians in the east of the country:

- UNJHRO, in collaboration with MONUSCO, established approximately 312 joint protection teams to prevent attacks on civilians in the east of the country between 2009 and 2014. These teams have drawn up plans for protection in different locations and have conducted 117,019 joint patrols;
- Between 2013 and 2014, MONUSCO's Civil Affairs Section and UNJHRO supported several communities in developing more than 49 community civilian protection plans. During this period, MONSUCO's Civil Affairs Section deployed 40 community liaison assistants throughout the communities concerned;
- During the period in question, MONUSCO, Catholic Relief Services and Caritas provided more than 900 mobile telephones and restored high frequency radio

communications networks in the provinces of Equateur, Katanga, North Kivu, Orientale and South Kivu. As a result of that assistance, FARDC and MONUSCO were able to take action to protect civilians;

- Between 2011 and 2012, UNJHRO established 93 MONUSCO early warning, analysis and rapid response units, which received 1,890 early warnings relating to threats of armed attacks against civilian populations.

46. Despite the results recorded and the adoption, in 2013, by humanitarian actors of a directive on civilian and military coordination concerning information sharing and the wider strategy of the United Nations for the protection of civilians, shortcomings persist in coordination between the humanitarian actors, UNJHRO and MONUSCO forces on information sharing and the prevention of risks of armed attacks on civilians. Some members of working groups on protection are reluctant to share information as a result of their strict interpretation of humanitarian principles (neutrality and impartiality) since the integration with MONUSCO, in 2013, of the Intervention Brigade, when it was given a mandate to fight in response to imminent attacks upon civilians.

2. Protection of children

47. On 4 October 2012, the Government and the special team of the United Nations for the protection of children in armed conflict signed an action plan to combat the recruitment and use of children in armed forces and armed groups, in accordance with Security Council resolutions 1539 (2004), 1612 (2005), 1882 (2009) and 1998 (2011). An interministerial committee and a joint technical working group, comprising the Government and specialized agencies of the United Nations,[9] were set up to implement the action plan. The MONUSCO Child Protection Section coordinates the joint technical working group and identifies and removes children from armed groups.

48. According to report A/69/926-S/2015/409 (2015) on children and armed conflict of the Secretary-General to the Security Council, at least 1,030 children (973 boys and 57 girls) were removed from armed groups in the provinces of Orientale and North and South Kivu in 2014.

49. UNICEF and its partners provided comprehensive care to 863 child victims of sexual violence in 2014.

50. Between 2012 and 2014, War Child UK supported the creation and transfer to the Ministry of Gender, Family and Children of a helpline covering the provinces of North and South Kivu and Kinshasa. This centre responds to children who have been demobilized from armed groups or who are victims of sexual violence. Between 2013 and 2014, social workers from the provincial division of social affairs in North Kivu received and processed 10,945 calls. In March 2015, the special representative of the Head of State tasked with combating sexual violence and the recruitment of child soldiers launched a similar initiative at the national level. It is important to ensure the complementarity of these two mechanisms in order to better coordinate assistance to the children concerned.

3. Protection of internally displaced persons and returnees

51. According to the Office for the Coordination of Humanitarian Affairs (OCHA), approximately 2.7 million persons were displaced in the territory of the Democratic Republic of the Congo and 1.4 million returnees were registered in 2014.[10]

[9] The International Labour Organization, UNHCR, the Office for the Coordination of Humanitarian Affairs, UNICEF and the MONUSCO Child Protection Section

[10] OCHA, Republic of Congo, Humanitarian perspective (November 2014)

52. The resolution of land disputes relating to the return of displaced persons to their places of origin led the Office of the United Nations High Commissioner for Refugees (UNHCR) to support local dispute resolution committees, 700 of which have been set up in the east of the country. Between 2013 and 2014, approximately 70 per cent of land disputes were resolved, 20 per cent were referred to the law courts and 10 per cent were not resolved.

53. Between October 2010 and January 2014, in the province of Bas-Congo, the Comitato Internazionale Per Lo Sviluppo Dei Popoli provided food and medical and logistical assistance — through local NGOs — to 10,000 Congolese who had been expelled from Angola. The short duration of these projects and the way in which they are funded negatively impacts the sustainability of the results obtained.

4. Protection of indigenous peoples

54. According to the Growth and Poverty Reduction Strategy Paper 2011-2015, 80 per cent of cases brought before the courts related to land disputes. Since 2012, there have been recurrent inter-community disputes between the Luba and the Twas (indigenous peoples) in the province of Katanga (Kabalo, Kalermie, Kongolo, Manono, Moba and Nyunzu), causing the displacement of approximately 4,000 Twas. These conflicts originated in discrimination against the Twas, including in relation to access to land ownership. UNHCR, through its partnership with Search for Common Ground, has run awareness-raising campaigns among internally displaced persons and returnees on peaceful cohabitation. The dialogue established between communities and local government, with technical support from UNJHRO and UNHCR, has led to a calmer situation in Kalermie.

D. Economic and social rights

55. The Democratic Republic of the Congo has significant natural resources which are often exploited illegally. This situation remains a significant source of conflict and violations of human rights, including economic and social rights.[11] The interventions of international actors focus in particular on access to health and capacity-building in local communities to allow their participation in drawing up plans for local development with a view to improving their enjoyment of economic and social rights.

1. Access to basic health care

56. According to demographic and health surveys, the number of women benefiting from a skilled birth attendant in a medical facility rose from 74 per cent in 2007 to 80 per cent in 2014.[12] UNFPA and the United States Agency for International Development carried out advocacy and technical assistance activities which resulted in the drafting of a bill on reproductive health and a national strategic plan on family planning in 2013. With the assistance of UNFPA, training for midwives was integrated into the National Reproductive Health Programme and the work of the Ministry for Higher and University Education. In addition, the combined efforts of Cordaid, the World Health Organization, UNFPA and UNICEF resulted in the equipping of medical facilities and the regular supply of medicines and health products, which led to an improvement in the provision of reproductive health services. These improvements were achieved through good strategic planning and coordinated efforts by the international community working with national and provincial authorities.

[11] Statement made in 2008 by the Special Rapporteur on the independence of judges and lawyers

[12] Second demographic and health survey (2014), p. 130

2. Combating discrimination with respect to persons living with HIV

57. The overall level of tolerance towards persons living with HIV was estimated to be 6.4 per cent in 2007.[13] The Joint United Nations Programme on HIV/AIDS and UNFPA provided technical assistance towards the adoption of Act No. 08/011 of 14 July 2008 relating to the protection of the rights of persons living with HIV/AIDS and affected persons. They supported the national multisector programme to combat AIDS and the updating of the national strategic plan to combat HIV. The Government created units to combat HIV, centralizing the efforts of all its departments. Despite those legal and institutional developments, the overall level of tolerance towards persons living with HIV is 4.2 per cent (demographic and health survey 2014). This slight decline in tolerance can be explained by the absence of measures accompanying the law to protect persons living with HIV, the impunity of persons committing acts of stigmatization and discrimination and the frequency of such acts.[14]

3. Human rights with respect to natural resources

58. One of the principal objectives of the Growth and Poverty Reduction Strategy Paper 2011-2015 is to strengthen the legal and regulatory framework in the mining sector. Communities bordering extractive resource operations areas do not enjoy some economic and social rights (the rights to health and education, access to safe drinking water and fair and equitable compensation) as a result of their limited capacities to form committees to defend their rights in the face of insufficient Government action to protect them.

59. Between 2012 and 2014, UNJHRO, the Carter Center, Cordaid and OSISA provided technical assistance to more than 3,000 members of civil society and local communities to ensure that they were able to contribute to the revision of the Mining Code. Thus, civil society formulated recommendations which were sent to the Government to ensure that the needs of local communities were taken into account in areas in which natural resources are extracted. The recommendations highlighted the lack of consultation with local communities regarding their development and the enjoyment of their economic and social rights. The new code has yet to be adopted.

60. The Growth and Poverty Reduction Strategy Paper 2011-2015 also targets improved management of the mining sector towards sustainable development of the social environment. From 2012 to 2014, Cordaid supported the local communities of Kolwezi and Fungurume (Katanga Province) in drawing up their local development plans for 2016-2020 and 2015-2019, respectively. The plans aim to establish a constructive dialogue between the communities, the companies Kamoa Copper SA and Temke Fungurume Mining and the local authorities to ensure that development priorities are taken into account and to protect the economic and social rights of the communities.

61. Raising the awareness of national stakeholders, local communities and business enterprises concerning the principles and norms of human rights in the context of the exploitation of natural resources, in particular the John Ruggie principles,[15] should be emphasized. The international community should make economic and social rights a priority for intervention, including by providing the necessary assistance in this area to all parties concerned. In addition, it should continue to support the Government in order to combat the armed groups that are responsible for the illegal exploitation of resources and the extreme insecurity that has engulfed the population.

[13] Demographic and health survey (2007), p. 130.

[14] National strategic plan to fight AIDS, 2014-2017, Democratic Republic of the Congo, 2014.

[15] The principles of John Ruggie, Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, were approved by the Human Rights Council in resolution A/HRC/RES/17/4 of 16 June 2011.

V. Gender mainstreaming

62. The Growth and Poverty Reduction Strategy Papers of 2006 and 2011-2015 highlighted the negative impact of the socioeconomic situation on gender issues. With the support of the international community, the Government has worked to reduce the vulnerability of women from a legal and institutional standpoint.

63. Implementation of the 2006 Sexual Violence Act has been strengthened by officers in the justice system and the defence and security forces. The National Gender Policy and its plan of action were adopted in 2009 and integrated into the National Strategy to Combat Gender-based Violence. In 2010, the Government adopted a plan to implement Security Council resolution 1325 (2000) on women, peace and security.

64. In accordance with the recommendation of the Special Representative of the Secretary-General on Sexual Violence in Conflict, advocacy by the international community resulted in 2014 in the appointment of a personal representative of the Head of State with responsibility for combating sexual violence and the recruitment of child soldiers.

VI. Conclusion

65. **The volatile political, security and economic context in the Democratic Republic of the Congo raises numerous challenges in terms of human rights.**

66. **The interventions of the international community have been relevant and effective in dealing with these challenges. They have also helped to improve the legal and institutional framework. They have furthermore contributed to capacity-building for many national stakeholders, contributed to greater awareness of obligations on the part of the authorities and greater knowledge of human rights on the part of population groups and civil society. As a result, considerable progress has been achieved in fighting impunity and numerous interventions have led to greater protection of the civilian population in the east of the country.**

67. **Nevertheless, the majority of technical assistance interventions were carried out in emergency situations and were short-term. Sustainability and ownership of the interventions proved to be a major challenge, both to those exercising their rights and to those whose role it was to protect them. In addition, some interventions by the international community were characterized by duplication and competition and occasionally by a lack of coordination with other actors due to the importance accorded by certain donors to specific issues or places or to the desire for visibility and fund-seeking.**

68. **There are still significant challenges in promoting and protecting human rights that require sustained and strategic technical assistance from the international community, as well as stronger coordination between international partners and between stakeholders and the Government in identifying, implementing and monitoring interventions — without forgetting to involve the beneficiaries.**

VII. Recommendations

A. To the Government

(a) Define the priorities for the justice and human rights sectors and coordinate the interventions of the international community aimed at promoting and protecting human rights at the central, provincial and local levels;

(b) Take appropriate measures to ensure the harmonious operation of all institutions responsible for implementing human rights (the human rights liaison entity, the National Human Rights Commission, the Interministerial Technical Committee on the drafting and follow-up to human rights reports and the National Commission for Preparation of and Follow-up to the UPR) and the effectiveness of the National Human Rights Commission and the unit for the protection of human rights defenders; establish an independent national mechanism for the prevention of torture;

(c) Improve the legal framework for human rights by acceding to those conventions that have not yet been ratified and by adopting the relevant laws, notably those that are pending;

(d) Adopt an inclusive approach to technical assistance by strengthening the capacities of individuals, institutions and relations with civil society.

B. To the United Nations Joint Human Rights Office and the United Nations country team

(a) Provide the Government with technical assistance with a view to:

- Finalizing the process for the adoption of legislation relating to the protection of human rights;
- Submitting the reports due to the international human rights mechanisms;
- Achieving the effective and harmonious operation of the human rights institutions, including the unit for the protection of human rights defenders, the National Human Rights Commission, the Interministerial Technical Committee on the drafting and follow-up to initial and periodic human rights reports and the human rights liaison entity.

(b) Make economic and social rights a priority for intervention, in particular through the dissemination of the norms and principles of human rights, including concerning the exploitation of natural resources;

(c) Establish a knowledge management system in order to improve the preservation of institutional memory and to ensure that interventions are documented and the results obtained are disseminated to political decision makers, the private sector, local communities and other relevant actors.

C. To the international community

(a) Improve the involvement of national authorities and beneficiaries in the design, implementation, monitoring and evaluation of projects concerning the

promotion and protection of human rights, taking their priorities into account to achieve greater impact;

(b) Prioritize structural and long-term interventions, including in the west of the country, in order to maximize their long-term impact;

(c) Coordinate the implementation and monitoring of interventions relating to technical assistance in order to improve their effectiveness and their impact.

United Nations A/HRC/30/34

General Assembly

Distr.: General
8 July 2015

Original: English

Human Rights Council
Thirtieth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Annual report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Summary

The present report contains an overview of the activities carried out by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination during the period under review and includes information on the sessions of the Working Group, communications and country visits.

The report presents the findings of the Working Group's ongoing global study of national laws and regulations relating to private military and security companies. The Working Group focuses on the laws and regulations of eight countries in Central America and the Caribbean (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama), eight countries in South America (Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Peru and Uruguay) and four countries in Europe (France, Hungary, Switzerland and the United Kingdom of Great Britain and Northern Ireland). The Working Group's global study aims to assess existing national laws regarding private military and security companies and their effectiveness in protecting human rights and promoting accountability for violations. Furthermore, it aims to identify any commonalities, good practices and regulatory gaps that may exist.

The Working Group notes that, while there are common elements in the laws of these countries, their regulatory approach to private military and security companies varies. The Working Group reiterates the need to effectively regulate the activities of private military and security companies and invites all Member States to facilitate its study, which aims to guide them in exercising effective oversight of the activities of such companies.

GE.15-11553 (E)

1511553

Please recycle

Contents

		Page
I.	Introduction	3
II.	Activities of the Working Group	3
	A. Twenty-second to twenty-fourth sessions of the Working Group	3
	B. Communications	4
	C. Country visits	4
	D. Information on individuals convicted of mercenary activities	4
	E. Other activities of Working Group members	4
III.	Research on national legislation concerning private military and security companies	5
	A. Introduction	5
	B. Analysis	5
IV.	Conclusions and recommendations	21

I. Introduction

1. The present report covers the activities of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination since its previous report to the Human Rights Council (A/HRC/27/50). In addition, it contains the results of the Working Group's study on national legislation concerning private military and security companies in Central America and the Caribbean, South America and Europe.

2. The report is submitted pursuant to Commission on Human Rights resolution 2005/2, which established the mandate of the Working Group, and Human Rights Council resolution 27/10, which further extended the mandate.

3. The Working Group comprises five independent experts: Patricia Arias (Chile), Elzbieta Karska (Poland), Anton Katz (South Africa), Gabor Rona (United States of America) and Saeed Mokbil (Yemen). During its twenty-third session, held in December 2014, Ms. Karska was elected Chair-Rapporteur for the period from January to December 2015.

II. Activities of the Working Group

4. A private military and security company is defined as "a corporate entity which provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities". Military services refer to "specialized services related to military actions, including strategic planning, intelligence, investigation, land, sea or air reconnaissance, flight operations of any type, manned or unmanned, satellite surveillance, any kind of knowledge transfer with military applications, material and technical support to armed forces and other related activities". Security services refer to "armed guarding or protection of buildings, installations, property and people, any kind of knowledge transfer with security and policing applications, development and implementation of informational security measures and other related activities".[1]

A. Twenty-second to twenty-fourth sessions of the Working Group

5. From 1 July 2014 to 31 March 2015, the Working Group held three sessions. During its twenty-second session, held in New York from 14 to 18 July 2014, it met with United Nations officials to discuss the study on the use of private security companies by the Organization, which was the basis of a Working Group report to the General Assembly (A/69/338). It also held an expert meeting on a possible international legally binding instrument on private military and security companies.

6. At its twenty-third session, held in Geneva from 1 to 5 December 2014, the Working Group held an expert meeting on foreign fighters and met with representatives of Member States on country visits and issues concerning the mandate.

7. At its twenty-fourth session, held in Geneva from 2 to 6 March 2015, the Working Group convened a second expert meeting on foreign fighters. It also considered a revised draft convention on private military and security companies and a corresponding concept paper.

[1] Draft convention on private military and security companies (see A/HRC/15/25, annex).

B. Communications

8. Since its last report to the Human Rights Council, the Working Group sent communications jointly with other special procedures mandate holders to the World Bank and to the Governments of Australia, Indonesia and Papua New Guinea.[2]

C. Country visits

9. The Working Group conducted an official visit to Côte d'Ivoire from 7 to 10 October 2014 (see A/HRC/30/34/Add.1).

D. Information on individuals convicted of mercenary activities

10. The Human Rights Council, in its resolution 21/8, requested the Working Group to establish a database of individuals convicted of mercenary activities. The Working Group sent a note verbale to all Member States on 22 January 2013, requesting information on cases of mercenaries convicted by national courts. Reminders were sent on 6 March 2013. No responses were received during the reporting period.

E. Other activities of Working Group members

11. From 5 to 6 November 2014, Ms. Karska was a panellist at a conference in Doha on security and human rights. As Chair of the Working Group, she made a presentation at the fourth session of the open-ended intergovernmental working group to consider the possibility of elaborating an international framework to regulate, monitor and oversee the activities of private military and security companies, held from 27 April to 1 May 2015.

12. Ms. Arias participated in a seminar on private military and security companies in Guatemala, held from 4 to 8 May 2015.

13. Mr. Gabor Rona made a presentation on the Working Group's application of the Guiding Principles on Business and Human Rights at a workshop on United Nations guiding principles, post-conflict situations and fragile States, held at the University of Nottingham, United Kingdom of Great Britain and Northern Ireland, on 20 and 21 May 2015.

14. Mr. Mokbil met with senior officials of the Saudi counter-terrorism committee on 25 May 2015, in Riyadh. He also cooperated with the preparatory committee for the international conference on the theme "Security and privacy versus terrorism", to be held in Venice, Italy, in September 2015.

---

[2] Summaries of the communications will be included in a report to be submitted to the Human Rights Council at its thirtieth session.

III. Research on national legislation concerning private military and security companies

A. Introduction

15. The Working Group continued its global study of national laws regarding private military and security companies to assess their effectiveness in protecting human rights and promoting accountability for violations. The study aims to identify any commonalities, good practices and regulatory gaps that may exist. The present report focuses on the laws and regulations of eight countries in Central America and the Caribbean (Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama), eight countries in South America (Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Peru and Uruguay) and four countries in Europe (France, Hungary, Switzerland and the United Kingdom). In its 2014 report to the Human Rights Council, the Working Group focused on eight francophone African States[3] and eight Asian States (A/HRC/27/50);[4] in its 2013 report, it focused on 13 Anglophone African States (A/HRC/24/45).[5] In its next report to the Council, to be submitted in 2016, the Working Group intends to focus on the national legislation of countries in Eastern Europe, the Pacific and North America.

16. The Working Group hopes that its global study will result in guidance that will help Member States to regulate the growing number of private military and security companies. The national laws on such companies in the present report were analysed using the following elements: (a) scope of the legislation; (b) licensing, authorization and registration; (c) selection and training of personnel; (d) permitted and prohibited activities; (e) rules on the acquisition of weapons; (f) use of force and firearms; (g) accountability for violations and remedies for victims; and (h) ratification of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries.

B. Analysis

Western Europe

Scope of the legislation

17. France, Hungary, Switzerland and the United Kingdom have national legislation on the private security industry. The United Kingdom, however, has only some provisions related to licensing and authorization, and adopts a self-regulatory approach within the framework of the British Association of Private Security Companies that covers such aspects as financial sanctions, compulsory training courses, site inspections and the suspension or withdrawal of membership rights.[6]

---

[3] Burkina Faso, Cameroon, Côte d'Ivoire, the Democratic Republic of the Congo, Mali, Morocco, Senegal and Tunisia.

[4] China, India, Malaysia, Pakistan, the Philippines, Singapore, Sri Lanka and the United Arab Emirates.

[5] Botswana, Ghana, the Gambia, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Sierra Leone, South Africa, Swaziland, Uganda and Zimbabwe.

[6] Kerry Alexander and Nigel White "The regulatory context of private military and security services in the UK", (University of Sheffield, 30 June 2009), pp. 16-18.

18. All four countries have national legislation covering the activities of private security companies,[7] including surveillance, the protection and guarding of persons and property or goods, the transportation, protection and shipment of cash, jewels, precious metals and other valuables, and the conduct of investigations. The regulation of the United Kingdom covers services provided by security consultants. In Switzerland, activities related to traffic management, assistance to public authorities, the transport of detainees and private detective services are also regulated.

19. In terms of geographical scope, legislation varies in range and content. The legislation of France and Hungary does not have extraterritorial application.[8] Swiss legislation, however, covers not only the activities of local and private security companies[9] but also the services provided by such companies hired locally or abroad by the Government[10] and by private security companies abroad as well.[11] The legal system of the United Kingdom is based on the principle of territoriality, which means that individuals cannot be prosecuted in the United Kingdom for crimes committed abroad (see A/HRC/10/14/Add.2).

Licensing, authorization and registration

20. In France and the United Kingdom, the entities that issue authorizations and licences are appointed by or exist within the ministry responsible for internal security. In France, that entity is the departmental prefect (or, in Paris, the police prefect),[12] which is accredited by the Council of State, whereas in the United Kingdom, the Security Industry Authority issues licences for the domestic activities of security operatives.[13]

21. Regarding criteria for authorization, the laws of France and Hungary do not require adherence with human rights standards. However, executives and employees who have been convicted for a misdemeanour or a crime cannot be accredited.

22. In the law of United Kingdom, there is no reference to human rights standards. As the Working Group noted in a 2008 report (A/HRC/10/14/Add.2), companies are chosen according to criteria determined by government procurement services. All contracts contain clauses allowing for the termination of a contract if a human rights violation has been committed. However, there is no formal system specifically to review contracts.

23. According to Swiss legislation, the "competent authorities" can decide to prohibit, wholly or partially, certain activities because they may be contrary to the aims of the law, including services that may be used to commit human rights violations.

24. With regard to registration, none of the countries analysed in the present report require a private military and security companies to undergo a special registration; they just need to undergo general registration in trade and commerce registers.

---

[7] France has Law No. 83-629; Switzerland has the Concordat on Security Companies of 1996 and the decree on the hiring of private security companies of 2007; Hungary has Act No. CXXXIII of 2005; and the United Kingdom has the Private Security Industry Act of 2001.

[8] Geneva Centre for the Democratic Control of Armed Forces, *Report on Swiss-based Military and Security Service Providers Operating in Crisis and Conflict Regions, Phase II: Comparative Study of Regulatory Approaches* (2007). Available at https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/sicherheitsfirmen/ber-dcaf-teil2-e.pdf.

[9] Concordat on the Services of Private Security Companies of 2010.

[10] Decree on the hiring of private security companies of 2007.

[11] Federal Act on Private Security Services Provided Abroad of 2013.

[12] See Law No. 83-629, arts. 7 and 25.

[13] See Private Security Industry Act of 2001, art. 7.

Selection and training of private military and security company personnel

25. Swiss law includes the most references to human rights-related standards. It requires companies to train their personnel in applicable national and international law, including on fundamental rights, except when no such company is available, stipulating a maximum of six months for such contracts.

26. The laws of France, Hungary and the United Kingdom make no reference to human rights training.

Permitted and prohibited activities

27. French law emphasizes that the only activities to be carried out by security providers must be the guarding and protection of persons and property or goods and the provision of protection to transport funds, jewels and precious metals.[14] Private security companies are obliged to clearly indicate the private nature of their work in order to avoid confusion with public security entities such as of the police. Similarly, in the Hungarian legislation it is noted that those involved in private security activities have no public authority powers, must use a uniform, cannot use the titles and insignia of the authorities and cannot prevent the authorities from carrying out their activities. The relevant law in the United Kingdom does not contain a list of prohibited activities but notes that it is an offence to engage in conduct for which a licence is required.[15]

28. Swiss law clearly prohibits direct participation in hostilities in an armed conflict abroad, including through the hiring, training and provision of security personnel for direct participation in hostilities abroad or the establishment, management or control of a company in Switzerland involved in such activities.[16] United Kingdom law does not define what military or security activity can be outsourced to private companies, but there is an understanding that military activity in situations of armed conflict can be delivered only by military personnel under the command of a commissioned officer.[17] Hungarian legislation does not rule on the direct participation of company personnel in hostilities, but its provisions are not applicable to members of the armed forces and State law enforcement agencies.[18] French law contains no provisions on the direct participation of private military and security company personnel in hostilities.

29. In terms of the participation of law enforcement agents in the activities of private military and security companies, in France, as a general rule, no former police or military personnel can take up positions in such companies.[19] In Hungary, the law emphasizes that staff members of the police and civil national security services performing official duties, and individuals who are not staff but contribute to related official duties, cannot be members or managers of companies providing private security services. Swiss and United Kingdom laws contain no provisions on this question.

[14] Law No. 83-629, arts. 1, 2 and 21.

[15] Private Security Industry Act of 2001, art. 3 (1).

[16] Federal Act on Private Security Services Provided Abroad of 2013, art. 8.

[17] See A/HRC/22/41, para. 53, and the response of the Government of the United Kingdom to the Working Group's request for national legislation and regulations on private military and security companies.

[18] Act CXXXIII of 2005, art. 2.

[19] Law No. 83-629, art. 9.

Rules on the acquisition of weapons

30. In France, Hungary and Switzerland there are no rules on the illegal acquisition of weapons. In the United Kingdom, the Export Control Act of 2002 envisages controls for trade in military, paramilitary and certain other goods between countries outside the United Kingdom (controls apply to United Kingdom nationals anywhere in the world and to activities carried out wholly or partially in the United Kingdom),[20] which could also be applied to private military and security company personnel, although the law does not explicitly aim to regulate the private military industry.

31. The absence of specific provisions on the illegal acquisition of weapons and on trafficking in arms by personnel is a clear gap in regulation.

32. In France, employees of public security companies that carry out surveillance activities or guard property or goods can be armed as long as they adhere to the conditions laid down in a Council of State decree. Similarly, in Hungary security guards can carry firearms, but these can be used only for self-defence and in an exigency.[21]

Use of force and firearms

33. In Switzerland, personnel of public security companies cannot be armed abroad,[22] but if the situation exceptionally requires that personnel bear arms in cases of legitimate self-defence or necessity, the contracting authority must stipulate it in the contract. In contrast, in the United Kingdom there are no legislative provisions on the use of force and firearms by private military and security company employees.

Accountability for violations and remedies for victims

34. None of the legislation reviewed contained provisions on reporting obligations for violations of the law committed by public security company personnel or on effective remedies for victims of human rights violations committed by such personnel.

35. Furthermore, laws regulate the monitoring of private military and security companies differently. In France, a permanent control of such companies is exercised by police officers and gendarmes.[23] In Switzerland, it is the authorizing competent authority that controls the activities of such companies abroad.[24] Swiss law stipulates specific sanctions, including fines and imprisonment, for violations such as direct participation in hostilities and serious human rights violations. The law requires civil liability insurance for risks related to the activities of the company. These may be deemed good practices.

36. In Hungary, companies carrying out private security services are controlled by the police, who monitor the lawfulness of the companies' activities.[25] In the United Kingdom, there are no legal provisions at the national level to address reporting requirements for alleged offences and violations, but it is understood that the liability that international humanitarian law applies to soldiers committing war crimes would also apply to employees of private military companies who become involved in armed conflict.

37. The monitoring mechanisms vary in form and content and, with the exception of Switzerland, the laws contain no provisions on a company's or its personnel's compliance

[20] Export Control Act of 2002, provisions 1-4.
[21] Act No. CXXXIII of 2005, art. 27 (4).
[22] Federal Act on Private Security Services Provided Abroad of 2013, art. 34 (1).
[23] Law No. 83-629, arts. 13 and 30.
[24] Federal Act on Private Security Services Provided Abroad of 2013, art. 37.
[25] Act No. CXXXIII of 2005, art. 8 (5).

with international human rights standards. It is essential to ensure the accountability of private military and security companies and their personnel to the Government of their country of origin, registration or operation. Standardized and effective accountability mechanisms need to be established to ensure the enforceability of regimes regulating the activities of private military and security companies, as well as the necessary penal accountability and civil liability of both individuals and corporate actors[26] for human rights violations.

Ratification of conventions on mercenaries

38. While none of the four countries have signed or ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, all are party to the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), article 47 of which defines the term "mercenary".

Central America

Scope of the legislation

39. The relevant laws are applicable only within the country (none provide for extraterritorial application).

40. Certain activities are stipulated in all legislation, such as the guarding and protection of property and persons, the maintenance of order at public events, the provision of bodyguard services, the provision of secure transportation, the manufacture and marketing of security equipment and systems, and the provision of security advice.

41. With respect to human rights references, in the law of Guatemala human rights are to be protected together with personal and collective security rights. This is also a major focus of public security in El Salvador.

There is no mention of international humanitarian law in any of the regulations reviewed. International human rights treaties are referenced in Guatemalan law, while Costa Rican law mentions international treaties in the context of the security of diplomatic representations.

Licensing, authorization and registration

42. Although all countries have provisions for obtaining authorization and operating permits, most do not make reference to specific human rights law as a prerequisite for obtaining them. Exceptions are Costa Rica, El Salvador and Guatemala, which do not, however, include human rights violations in the list of infractions.

43. Supervisory authority is exercised by the ministries responsible for public security and, in a few cases, by the police. These entities are responsible for ensuring compliance with the laws that regulate the activities of private security companies. They generally monitor compliance with requirements, grant authorizations and issue permits. In the event of non-compliance, they apply sanctions, which range from a warning and a fine to the suspension or cancellation of a permit. They also renew authorizations and permits. In certain cases, they define and authorize training programmes and curricula (Guatemala). They also carry out periodical inspections and keep records submitted by private security providers.

[26] See the Guiding Principles on Business and Human Rights.

44. All reviewed countries require a written request to be made to the competent authority and the submission of documentation, depending on the type of service and whether it is for an individual or a company. A company's charter, background information on employees and management, the type of proposed activities and personnel, are all required to obtain a permit. All regulations include the payment of fees, insurance for damages to third parties and health insurance for staff. If a private security company has firearms, it must have a secure place for storing them and certify that staff have completed the required training. Additional information must be submitted regarding the company's installations, equipment and firearms. Operational manuals must be approved by the authority. Permits are renewable for prescribed periods (two years in Nicaragua and Honduras, three years in Guatemala and El Salvador and five years in Costa Rica and Cuba) and can be denied, suspended, revoked or cancelled for non-compliance with legal requirements and obligations.

45. Cuban law differs in important ways from the other regulations. In particular, article 3 of Act No. 186/1998 establishes and regulates the system of security and the services that can be provided in this sector.

46. Panama requires that nationals be the owners of companies (Act No. 21/1992, art. 4) and foreigners require special authorization from the Ministry of Government and Justice. Mexican federal law requires Mexican nationality for individuals who want to operate companies (art. 25, I and VI). Costa Rica allows resident foreigners to provide services as guards, while foreign companies in Honduras requesting authorization must join with Honduran companies involved in the same activity and name a Honduran-born manager (art. 138).

47. All the reviewed countries have a supervisory authority that maintains a register of private security service providers with information on their activities and personnel.[27]

Selection and training of private military and security company personnel

48. Generally, there is no description of the selection processes in the countries reviewed but there are requirements for management and personnel. These differ depending on whether the staff is armed or unarmed, and on the services involved.

49. Private military and security company personnel must be adults with a minimum level education, usually primary or basic education. In Cuba and Honduras, regulations do not mention this element. Staff need to be nationals in Honduras, Mexico and Nicaragua.[28] In Cuba, they must be resident in the country. In Costa Rica and El Salvador, personnel of such companies may be resident foreigners, while Guatemalan law makes no reference to nationality. Resident foreigners must be registered in their country of origin and have resided in the country during the past five years.

50. A common criterion for the eligibility of personnel is suitability and good moral character, as confirmed by a clean police record. Costa Rican law requires candidates to have had a clean record for the previous 10 years.[29] Salvadoran law requires guards to not have police records and Guatemala is the only country that requires candidates to prove that their previous work contract was not terminated because they committed a crime or a human rights violation. In Panama, candidates must not to have been expelled from a public agency for committing a crime or a serious administrative infraction.[30]

[27] Act of 2006, art. 8.

[28] Honduras, Agreement No. 013/2009, art. 34 (b).

[29] Act No. 227/2000, art. 14 (c).

[30] Executive Order No. 21/1992, arts. 1 and 9.

51. Costa Rica, El Salvador and Guatemala require a psychological and a physical exam. El Salvador and Nicaragua require the person to be of sound mental and physical health.

52. Cuban regulations do not spell out the requirements with which operational personnel must comply. The requirements are regulated by the Ministries of the Interior, Labour and Social Security.

53. In general, there are no requirements linked to human rights in the regulations of these countries, except in Guatemala, where candidates who have served in the army, the national civilian police, the government intelligence services or another private security company must prove that if they were dismissed it was not because they committed a crime or a human rights violation.

54. Most regulations require passing courses provided by an institution recognized by law. However, the laws and the regulations do not indicate what should be included in the curriculum or its duration, except in a few cases, where such information is mentioned in general terms. There are no established standards or supervision concerning the quality of the training, although there are some requirements for the use of firearms.

55. Nicaragua prohibits the use of firearms considered to be combat weapons. Panama requires training on the administration and use of firearms and at least two shooting range practices per year.[31] Costa Rica requires private security personnel to pass a course given by the national police academy.

56. Most countries do not mention curricula relating to human rights, except El Salvador, Guatemala and Mexico. Mexican regulations require a service provider to offer courses to its personnel that follow an authorized model with content on human rights at least once a year. Salvadoran legislation gives certain details about the contents and mentions courses covering procedures for private agents on human rights. Guatemala requires theoretical and practical training on human rights in accordance with international standards and on the use of force and firearms.[32]

57. The weakness in the requirements regarding training content and its duration constitute a risk for the respect and protection of human rights, especially when only a relatively low level of education is required for personnel. It is essential to have minimum standards in both respects, which ensure that personnel acquire basic knowledge and internalize human rights standards as the ethical and legal framework for private security activities. They must act responsibly in situations involving possible legitimate use of force, especially since all regulations permit the use of weapons.

Permitted and prohibited activities

58. Permitted activities include the guarding and protection of property, persons and public events, the provision of body guard services, the provision of secure transportation services, the manufacture and marketing of security systems and the provision of security-related advice. All countries but Nicaragua mention private investigations. Mexican federal law covers security services for obtaining information, including background reports, as well as the installation and sale of armour systems.

59. Private companies are limited to operating only in the places or buildings for which they have been contracted. In exceptional cases, for example in Nicaragua, private security personnel are permitted to work in public places. To avoid confusion, uniforms, credentials,

[31] Executive Order No. 22/1992, art. 3.

[32] Act No. 52/2010, art. 51 (c).

logos and vehicle colours similar to those used by the police or armed forces cannot be used. Using and carrying weapons without proper authorization are also prohibited.

60. A common prohibition concerns activities reserved for the police and armed forces. Costa Rican law prohibits the act of "appearing to or replacing the role played by the administration or judiciary, or interfering in their work", as well as the provision of services in prisons.[33] El Salvador prohibits investigations that are the exclusive competence of the Public Prosecutor's Office or the national police.[34] Guatemalan law is the most detailed and provides that private security cannot assume functions that are the tasks of the Government.[35] Mexican law prohibits private security personnel from doing work entrusted to the public prosecutor and the police, such as obtaining background information on persons.[36] Honduras prohibits the use of installations or equipment of the national police for training persons or companies providing private security.

61. Several countries include prohibitions that could be related to activities of a military nature or to militias or mercenaries. In Costa Rica and El Salvador, the law prohibits the existence or functioning of any type of armed private group that is unauthorized and does not comply with legal requirements.[37] Honduras prohibits Hondurans or foreigners from training or conducting drills for the purpose of providing private security services abroad.[38] Costa Rican law prohibits detaining, interrogating, requisitioning or sequestering, violating a person's honour and physical integrity, intercepting correspondence and interfering with communications. Mexican law, which contains a prohibition linked to compliance with international human rights standards, provides that security services must avoid, at all times, committing, tolerating or permitting acts of torture and mistreatment, as well as cruel, inhuman or degrading acts, even when in execution of an order of a superior or in supposedly special circumstances, such as threats to public security.[39] Similarly, Costa Rican regulations state that in no circumstances may simple obedience be invoked as justification or impunity for torture or other treatment or cruel, degrading or inhuman punishment.[40]

62. Costa Rica and Honduras have specific regulations that limit the number of staff employed by private security companies. Costa Rica prohibits such companies from maintaining a number of security guards that equals more than 10 per cent of the membership of the police force, by type of service.[41] Honduran law states that the number of guards they employ cannot be more than 6 per cent of the national police force. Considering the growth of private security activities in the region and the high number of security personnel compared to the police, this law is considered to be a good practice.

Rules on the acquisition of weapons

63. There are no special provisions on the origin and acquisition of weapons in most of the countries reviewed. In seven of the countries, the acquisition by private security companies of weapons in illegal national or international markets is not regulated, while

[33] Act No. 8395/2003, art. 45 (h) (1).
[34] Act No. 227/2000, art. 49 (k).
[35] Act No. 51/2010, art. 59.
[36] Mexican federal law of 18 October 2011, art. 5 (III).
[37] Act No. 8395/03, art. 6, and Act No. 227, art. 60, respectively.
[38] Act No. 67/2008, art. 140.
[39] Mexican federal law, art. 32 (X).
[40] Regulation No. 33128, art. 29 (3).
[41] Act No. 8395/2003, art. 19.

Act No. 21 of Panama states that firearms can be purchased only on the domestic market.[42] The lack of regulation in this area is one of the gaps observed in this region.

Use of force and firearms

64. All legislation permits the carrying and use of firearms by private security personnel, within limits. There are differences not only with regard to the type of weapon authorized but also to the requirements for ownership and use. For example, Panama requires each firearm to be assigned to a specific security guard; failure to do so is an infraction.[43] El Salvador permits private security agents to use of their own firearms after informing the national police.[44]

65. Generally, authorized firearms are to be used by personnel when they are on duty. Panama permits the carrying of firearms exceptionally during travel. In Cuba, firearms may be carried in public only with authorization of the Minister of the Interior.[45]

66. Most regulations do not cover the calibre of firearms. Mexican law obliges a provider to use only registered firearms while Cuban law does not specify the calibre that is authorized by the Ministry of the Interior.[46]

67. Nicaraguan regulations provide that persons guilty of a crime against the public order or State security or involved in a terrorist act, narcotic trafficking, domestic violence, human trafficking and sexual crimes cannot own or carry firearms for civilian use.[47] In Panama, in the case of domestic conflict or a declaration of war, firearms belonging to private security companies come under the direct supervision of the Ministry of Government and Justice.[48] In El Salvador, in the event of a strike or legal stoppage of private security services, the supervisory body will make weapons, ammunition and other equipment available to the national police and will then return them once the situation has returned to normal.[49] This type of restriction is considered to be good practice, as it aims to decrease the risk of carrying and using firearms in unstable situations.

68. It is prohibited in Guatemala to use undue force, and steps must be taken to prevent harm to life and physical integrity and the violation of other rights of individuals.[50] In Costa Rica, the ethical-legal principles governing police activities, including the principle of using force only when strictly necessary, apply to private security companies.

69. The lack of regulations governing the use of firearms and provision of sanctions is a gap that places persons at risk. In the light of permitted use of firearms by private security personnel, consideration should be given to addressing this.

Accountability for violations and remedies for victims

70. Concerning sanctions against human rights violations, there are differences in the laws reviewed. Guatemala considers it a serious infraction to infringe on the right to

[42] Act No. 21/1992, art. 8.
[43] Executive Order No. 21/1992, art. 27 (d).
[44] Act No. 227/2000, art. 27.
[45] Decree No. 186/1998, art. 34.
[46] Act No. 52/1982, art. 6.
[47] Act No. 510/2005, art. 15.
[48] Executive Order No. 21/1992, art. 18.
[49] Act No. 227/2000, art. 16.
[50] Act No. 51/2010, art. 59 (j).

dignity, personal and family intimacy and confidential communications, or any other right protected by the Constitution and international human rights treaties.[51]

71. Guatemala is the only reviewed State that prohibits private security companies from recruiting a person who has worked for another such company and was dismissed for human rights violations. Costa Rica sanctions an individual or a company that violates the prohibition on detaining someone and depriving him or her of his or her freedom.

72. Mexican law provides criteria to determine the appropriate sanction applicable to an infraction. Guatemala has established the crime of "illegal provision of private security services" when such services are provided without authorization and made it punishable by a 6–12 year prison sentence and a fine.[52] In Costa Rica, private security personnel who operate with suspended or cancelled permits can receive a prison sentence of between three months and two years.[53]

Ratification of conventions on mercenaries

73. Only three of the eight countries studied have ratified the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries: Cuba (2007), Costa Rica (2001) and Honduras (2008). This convention has not been referred to in the laws reviewed.

South America

Scope of the legislation

74. For Argentina, which has a federal system wherein regulations are implemented by each province, the regulations of the Province of Buenos Aires are analysed.

75. All regulations reviewed cover the provision of private security within that country. There are no laws applicable beyond national borders and no reference to extraterritorial application. The export and import of private security services are not regulated.

76. The rules do not regulate private military security services or mention military and private security companies.

77. In general, private security services are provided for guarding property and persons, including at public events, by personal body guards, detectives or private investigators, through consulting services, technological surveillance and alarm services, the marketing of equipment for guarding and private security and for the transport of valuables. Regarding armoured transportation in Argentina, Act No. 12.297/1999 (Buenos Aires) covers the transportation, guarding and protection of any legal transfer, except the transport of funds. It also covers private services, such as obtaining evidence for civil law suits.

78. Several regulations classify private security services as armed or unarmed. Colombian law stipulates that services can be provided by individuals without firearms. Ecuador classifies services as fixed guard duty, mobile guards and private investigation.[54] Guards cannot carry firearms in the Plurinational State of Bolivia.

79. Several regulations, like those of Colombia, also recognize private security services that are part of a company's own security provisions.[55] There are also special guard services

[51] Act No. 51/2010, art. 58 (3b).
[52] Act No. 51/2010, art. 66.
[53] Act No. 8395/2003, art. 53.
[54] Act No. 2003/12, art. 2.
[55] Act No. 356/1994, art. 17.

and private community security services that operate as cooperatives, community action groups or community enterprises, providing security to their members. Chile obliges banking and financial institutions, public entities, armoured transportation companies, strategic companies and public services to maintain their own private guard services.[56]

80. Most legislation does not mention international conventions and treaties on human rights except for in Brazil, Colombia and Peru.[57] Peru prohibits mercenary activities. A Brazilian 2012 ordinance mentions human rights, in the annexes covering the training curriculum. Colombian law states that "citizens must have sufficient legal recourse for the exercise of their constitutional rights that effectively guarantees and preserves observance of … international treaties and conventions on human rights".[58]

81. Colombian regulations require private security personnel to inform the competent authorities when they learn of any criminal act or violation of human rights while carrying out their activities.

82. Most of the reviewed countries expressly prohibit active members of the police and armed forces from undertaking private security activities. In Uruguay (Act No. 275/1999), management-level police officers are prohibited from participating as owners, partners or representatives of companies providing security, or from having any link or relationship with private security companies. Ecuadorian law extends the prohibition to the spouses and relatives to the second degree of consanguinity, to active members of the police and officials, employees and civil servants who work for the Ministry of National Defence, the Ministry of Government, the national police, the armed forces and the Office of Business Oversight. In Colombia, members of the military, police officers in active service, staff of the Ministry of National Defence and the Police, the Administrative Department of Security and the Office of Surveillance and Private Security cannot be partners or employees of security guards.[59] Buenos Aires extends this ineligibility to security personnel and employees of intelligence and prison services.[60] Chile and Peru do not have this prohibition.

83. The Plurinational State of Bolivia merits special mention, because it prohibits not only the members of the armed forces and the national police from participating in private security services, but also public officials at any level in active service.[61] This is unique, and due to the existence of the so-called battalion of private physical security, which is part of the national police and which hires out police officers as security officers. Criticisms of the battalion are based on the national police being the institution that authorizes, supervises and inspects private security companies, which claim that because they are not authorized to carry firearms, they are at a disadvantage in competing with the battalion.[62]

84. Except for Chile, ex-members of the police and the armed forces who have been discharged for having committed infractions or crimes are prohibited from providing private security services.

85. Private security activities are generally limited to the sites, buildings and private spaces specified in the contracts.[63] This restriction becomes less precise in activities such as

[56] Act No. 3.607, art. 3.

[57] Ecuador in its regulations on private investigations (Act No. 1181/2008, art. 7).

[58] Act No. 2974/1997.

[59] Act No. 356/1994, art. 78.

[60] Act No. 12.297/1999, art. 8.

[61] Act No. 222544/2004, art. 38.

[62] See Patricia Arias, "Seguridad privada en América Latina: el lucro and los dilemas de una regulation deficitaria", FLACSO-Chile (2008), p. 34.

[63] Chile, Act No. 3.607, art. 1.

community guard services in Colombia and armoured transportation, which cover larger areas.

86. Generally, private security activities are complementary and subordinate to the work of the police. Several regulations establish the duty of private security companies to cooperate with the police in cases determined by law. In Colombia, such companies are required to cooperate in crime prevention and to support the police in the event of a disaster.[64] Uruguay stipulates that they must support and cooperate with the police, for example by providing them with information.[65] Peruvian law requires cooperation at the request of the executive branch in the event of a state of emergency.[66] In Ecuador, private security companies must immediately cooperate with the national police and will be under the authority of the armed forces during a state of emergency. In Buenos Aires, providers of private security services must assist the police in its activities[67] and make their material and human resources available to the police in the event of a catastrophe or emergency.[68] Under Bolivian regulations, private security companies must cooperate with the police when required.[69] The human rights implications that these provisions have in the sharing of activities with national security forces need to be considered carefully.

Licensing, authorization and registration

87. In most of the countries, the supervisory and inspection authority for licensing private security companies is within the ministry responsible for public security. The exception is Colombia, where the authority is the Office for Surveillance and Private Security, a national technical agency with financial and administrative autonomy that is part of the Ministry of National Defence.

88. In all the countries under review, companies require authorization and permits in order to provide private security services. The requirements can be general (Buenos Aires) or specific to the service provided. Security service providers are always required to carry out only the activities for which they are authorized and have a permit, which are stipulated in contracts.

89. A certificate of police and court records for private security personnel is a common requirement to ensure suitability and good moral character. Brazil provides full details on requirements for obtaining a permit, including certification of the absence of a police record by the federal, state, military and electoral justice systems.

90. Most legislation does not provide specific requirements concerning records of violations of human rights. The exception is Buenos Aires, where private security companies are prohibited from having partners that have benefited from amnesties No. 23.492 and No. 23.521 and been indicted for human rights violations. A certificate issued by the competent human rights authorities is required as proof.[70] The absence of a police record must be proven with a certificate from the National Registry of Recidivism and Criminal Statistics, a certificate issued by the Ministry of Justice and Security and a sworn declaration of non-involvement in a court case for felonies or misdemeanours related to security activities. These requirements constitute a good practice in vetting the background of employees.

[64] Act No. 356/1994, art. 74 (6) and (12).
[65] Act No. 275/1999, art. 2 (2.3).
[66] Act No. 28.879/2006, art. 23 (j).
[67] Act No. 12.297/1999, art.1.
[68] Act No. 12.297/1999, arts. 9–11.
[69] Act No. 222.544/2004, art. 34.
[70] Act No. 12.297, art.8 (2); Acts No.23.492 and No. 23.521.

91. A common requirement for obtaining a permit is the obligation to contract third-part liability insurance (Bolivia (Plurinational State of), Colombia and Ecuador, and the Province of Buenos Aires) or insurance for employees (Brazil and Chile); submit proposed models of uniforms and credentials, which must be different from those used by the police; and show proof of the availability of offices for deposit of firearms. Authorizations and permits have a fixed duration, which varies among countries.

92. Most of the legislation requires a special register for private security companies (not always at the national level) and another for individuals who provide security services. In general, private security companies must keep registers of their staff, contracts, inspections carried out, users and records of issues concerning firearms and ammunition. The exception is the Plurinational State of Bolivia, which only requires registers and records of daily activities, contracts, accidents, hiring and dismissals, transfers and permits. [71]

93. In Brazil, companies have a register with the federal police and companies specialized in armoured car services must be registered with the army.[72] In Ecuador, companies must be registered in a special ledger of the business register.[73] In Peru, the registry of companies and personnel is kept by the Office for the Control of Security Services, Firearms, Ammunition and Explosives for Civilian Use. In Chile, the prefectures of the *carabineros* keep a registry,[74] while in Colombia, it is the Office for Surveillance and Private Security.[75]

94. Buenos Aires requires the supervisory authority to keep a registry of the persons authorized to provide private security services and also of persons rejected for infractions of Act No. 12.297. The maintenance of such a register is a good practice and, if established at the national level, would result in better monitoring of private security personnel who have committed infractions.

Selection and training of personnel

95. Common requirements for private security personnel include having reached the age of majority and having a clean police record. A certification of physical and psychological aptitude (Brazil, Chile, Ecuador, Peru and Uruguay, and Buenos Aires) is also required. Personnel cannot be an ex-member of the police or armed forces discharged for infractions.

96. Several countries require that personnel be a national of that country (Brazil, Chile, Colombia and Ecuador). Peru permits guards to have foreign nationality, while the Plurinational State of Bolivia permits foreign advisers and requires an INTERPOL background certificate. In Colombia, partners of private security companies and members of a private security cooperatives must be native-born.[76]

97. In most cases, guards must have completed basic or primary schooling. In Peru, they are required to have completed secondary education.

98. All countries require proof of a clean police record.[77] Ecuador excludes anyone who has been sentenced to prison or who has been dismissed by another private security company for proven crimes.[78] In Brazil, personnel must have no record of involvement in a

[71] Act No. 222544/2004, art. 26.
[72] Act No. 7.102/1983, arts. 17 and 31.
[73] Act No. 2003/12, arts. 10 and 11, and Act No. 1181/2008, art. 12.
[74] Act No. 1773/1994, art. 23.
[75] Act No. 2355/2006, art. 4 (4) and (9).
[76] Act No. 356/199, art. 12 (4).
[77] Act No. 003/2011, arts. 18 (c) and 41 (d).
[78] Act No. 2003/02, arts 4 and 5.

crime or of having been sentenced by a federal, military or electoral court. This, however, is not an obstacle to registration if the person has only been accused or tried for a crime, sentenced to prison and been rehabilitated, when at least five years have passed from completion of the sentence and in cases of conditional suspension of the procedure.[79]

99. All the countries reviewed require a permit to indicate the firearm's type and authorise its carriage.

100. Reference to human rights is not commonly associated with the vetting of private security personnel, except in Buenos Aires. The violation of basic rights by personnel is not covered, which is a serious shortcoming.

101. Authorizations, permits and credentials of guards have varying durations: from two years for special services in Colombia to five years in Brazil.

102. Except in the Plurinational State of Bolivia, private security personnel require special training. In Buenos Aires, it is the supervisory authority that authorizes training centres and approves their curriculum.[80] The regulations in Chile do not specify the curriculum or duration, and it is the *carabineros* who provide instructions and approve programmes and content.[81] Ecuador allows the national police to establish training centres, but human rights is not in the curriculum.

103. Peru recognizes specialized private security training centres, which must be authorized by the Ministry of Education and the Ministry of the Interior. There is no mention of human rights in the training course but specialized training centres are prohibited from training and providing practice for mercenaries, in strict compliance with the obligations contracted by Peru through international treaties and agreements in force. Peru is the only one of the reviewed countries to refer to mercenaries in its law on private security.

104. In Colombia, training must place special emphasis on respect for human rights.[82] For special and community security services, the Government will promote special training programmes on human rights and international humanitarian law along with other subjects.[83] The term "human rights" appears several times in Brazilian legislation.[84] The regulations add that training must cover preserving the physical integrity of persons confronted with the use of force in their work, in accordance with the principles of human rights advocated by the United Nations.

Permitted and prohibited activities

105. Activities permitted by law are the surveillance and protection of persons and property as established by regulations. All these activities are permitted if carried out according to law and as defined in the contracts.

106. A common limit to private security companies is that they refrain from engaging in activities reserved for public security institutions. The law on the Bolivian national police prohibits activities that are similar to those of the national police.[85] Uruguay provides that

[79] Ordinance No. 3233/2012, art. 155 (VIII, 4).
[80] Act No. 12.297/1999, art. 18.
[81] Act No. 93/85, art. 9.
[82] Act No. 365/1994, art. 74.
[83] Act No. 2974/1997, art. 21.
[84] Ordinance No. 3233, annexes; Act No. 7.102/1983, art. 16; and Ordinance No. 3233/2012, art. 155 (VI).
[85] Act No. 734, art. 135.

the public order attributions of individuals and companies authorized to provide these services are limited to those that the law grants to private individuals. Peru prohibits companies from carrying out the kind of activities that are carried out by the armed forces or the national police.[86] In Ecuador, private security activities cannot encroach on the police's sphere of action.[87] Colombia has a similar regulation.[88]

107. Peru has detailed regulations on prohibited activities, including those that compete with the armed forces or national police.[89] These prohibitions are possibly the result of the scandal involving the FORZA Company. The regulation adds a general provision prohibiting such companies from carrying out activities that violate the individual rights enshrined in the Constitution of Peru.[90] Colombia prohibits private security companies from engaging in activities involving special and community guard services, intelligence activities, combat training, confiscations, searches, interceptions or other illicit activity.[91] By article 5 of Act No. 3.607, Chile, "if required by the national interest", prohibits all individuals and companies from providing armed guards.

108. There are prohibitions covered in the laws of Uruguay and Buenos Aires aimed at protecting constitutional guarantees and rights,[92] such that companies cannot intervene in political, labour or religious conflicts and cannot exercise influence over political, trade union or religious opinions.

Acquisition of weapons

109. All seven countries that allow the carrying of firearms require a permit for carrying authorized firearms, both for companies and guards. This covers both the possession and bearing of firearms. Companies must comply with the requirements as to their use and custody. The general rule is that prohibited firearms cannot be used, or that the use of certain firearms is restricted to the police or the armed forces. Identification credentials must always be worn by guards and must indicate the type of firearm that is authorized. The Plurinational State of Bolivia is the only country of those surveyed that does not permit providers of private security services to carry firearms.

110. All legislation establishes which services may be carried out with or without firearms; in some cases, an option is given to the provider. For example, the Peruvian regulations prohibit the use of firearms when an individual performs guard services for third parties. Colombia allows individuals to provide private security services, but only unarmed.[93] Chile does not allow companies to have armed guards. In Brazil, a guard has the right to carry a firearm while on duty.[94] In Peru, Act No. 28.879 establishes that specialized private security companies must have permits for their non-combat firearms and ammunition. In Colombia, the firearms law distinguishes between a permit for possession by individuals and companies and a permit to carry firearms for individuals and guard and private security services. It also stipulates that a private security company can have a maximum of one firearm for personal defence for every three guards in the company's employment. In Ecuador, the number of weapons is authorized in proportion to the

[86] Act No. 28.878/2006, arts. 24 (c) and 28.
[87] General provision No. 9, act No. 2003/12.
[88] Act No. 356/1994, arts. 73 and 74 (2).
[89] Act No. 28.879, art. 24.
[90] Regulations for Act No. 28.879, art. 60 (j).
[91] Act No. 2974/1997, art. 22.
[92] Act No. 12.297/1999, art. 14. In Uruguay, Act No. 275/1999, art. 4 (4-2).
[93] Act No. 2187/2001, art. 2.
[94] Ordinance No. 3233/2012, art. 164.

companies' service possibilities."[95] Others, for example Chile, allow one firearm for each private guard.

111. Private security companies are commonly required to have adequate infrastructure for storing firearms and ammunition, for example for when guards go off duty. They must also maintain a register of the entry and exit of firearms.

112. In the regulations reviewed, there is no mention of firearms acquired illegally or of trade in unregistered weapons. There are also no infractions that sanction the acquisition or carrying of illegally acquired firearms.

Use of force and firearms

113. The possession and carrying of firearms are restricted to those places where security and guard services are provided by contract, and non-compliance with this leads to the confiscation of the firearm and other sanctions as prescribed by law.[96] Firearms must be stored while guards are off duty.

114. All eight countries require training in the use of firearms, although requirements differ from country to country. Firearm laws complement and provide details on the rules governing the carrying and use of firearms. When laws on private security do not indicate the maximum calibre, they mention general limits, such as "non-combat weapons" or "for civilian use".

115. Private security companies are subject to mechanisms of accountability like any other entity. There are no norms that sanction the behaviour of their personnel more severely than they do the behaviour of ordinary citizens. This, despite the fact that private security personnel are individuals who are authorized to carry firearms, in most cases, and act within the framework of the delegation of the legitimate use of force.

116. In most legislations, there are very few concrete regulations on the use of force and firearms in the light of human rights standards. An outstanding practice is reflected in a Brazilian regulation (2012) that sets out in detail a study plan for private security guards that includes human rights.

Accountability for violations and remedies provided for victims

117. There are no specific procedures for human rights violations in the laws that were reviewed. There is no mention of human rights violations in any of the sections that deal with inspections and sanctions, and no mention of compensation for victims of violations.

118. Infractions are classified from less serious to very serious in most of the countries reviewed. Established sanctions can range from a warning to fines, suspension and cancellation of the operating permit. Infractions are primarily associated with non-compliance with formalities and requirements regarding permits and authorizations, regulations that govern the possession and carrying of firearms, requirements on the use of uniforms and installations, as well as acts and omissions in duties and non-respect of prohibitions.

119. Colombian regulations state that private security providers must respect the public's basic rights and freedoms.[97] Providers of guard and security services have a duty to cooperate with the Office of Surveillance and Private Security in its inspections and must also establish internal control mechanisms. In the case of special services and community

[95] Act No. 2535/1993, art. 11.
[96] Act No. 1181 of Ecuador, art. 4, and Act No. 365 of Colombia, art. 97 (2).
[97] Act No. 365/1994, arts. 72 and 74 (2).

guards, the regulations provide that they must inform the authority of any criminal acts and violations of human rights and international humanitarian law that they learn about during the course of their work. For community services, an oversight council is created, which submits quarterly reports to the Office with recommendations to ensure public security, opens activities to public scrutiny and provides effective monitoring.[98] This is a good practice.

120. In Brazil, activities are supervised by a department of the federal police. The regulation requires private security companies to communicate immediately to the specialized private security delegations or the inspection commissions in their area about illegal activities in which their guards are involved.[99]

121. In Buenos Aires, the supervisory authority audits and applies sanctions, and must make at least one annual inspection. In Ecuador, the law provides for monitoring and regulation of private security companies by the Ministry of Government and Police together with the Office of Business Oversight, and inspections may take place at any time and under any circumstances, with the Ministry applying sanctions for infractions committed. In the Plurinational State of Bolivia, the national authority responsible for private companies supervises and monitors the operations of such companies and ensures compliance with regulations, efficient and transparent operations, periodically inspects the companies and issues warnings.[100] Regulations establish the responsibility for management of the companies and their personnel, for any negligent activities or for the commission of crimes during their work.

122. In Peru, the Office for the Control of Security Services, Firearms, Ammunition and Explosives for Civilian Use supervises private security activities and prosecutes those that violate the human rights enshrined in the constitution.[101] In Uruguay, the Ministry of the Interior is responsible for regulating and inspecting private security companies, and proposes sanctions in the event of infractions. In Chile, it is the prefecture of *carabineros* that supervises, inspects and regulates companies with armed and unarmed guards.

Ratification of conventions on mercenaries

123. Only two countries have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries: Uruguay (1999) and Peru (2007). There are no regional regulations governing the activities of mercenaries. The concept of mercenary activities is mentioned only in the legislation of Peru on private security services.

IV. Conclusions and recommendations

124. **The research revealed that while all analysed countries have legislation regulating private security companies, each country approaches the privatization of the security industry differently, which results in patchy and inconsistent regulation. The Working Group stresses that the different approaches and regulatory gaps demonstrated in the study may result in a serious undermining of the rule of law and the accountability of private military and security company personnel for violations of the law. Furthermore, regulatory gaps create potential risks to various fundamental**

[98] Act No. 2974/1997, art. 13.
[99] Ordinance No. 3233/1012, art. 165.
[100] Act No. 222544, art. 7.
[101] Act No. 003/2011, arts. 55, 59 and 60 (j).

human rights, such as the right to security, the right to life, the prohibition of the arbitrary deprivation of liberty, the prohibition of torture, cruel, inhuman or degrading treatment and the right of victims to effective remedies.

125. Few countries have national legislation that covers the activities of private military and security companies abroad. Considering the transnational nature of private security and military services, the insufficient regulation regarding the scope of the analysed legislation seriously weakens the rule of law. In contexts in which borders between countries are porous, it is necessary to fill the gaps and promote regional and subregional agreements for the regulation of private military and security companies, to effectively protect the rule of law, human rights and exercise of the right of peoples to self-determination.

126. Another important gap is that these regulations do not directly address military-like activities or private military and security companies. The transnational and military services provided, in armed conflict and other complex scenarios such as the so-called war on drugs, increase the probability of the use of firearms by personnel of private military and security companies, and the risk of violation of human rights. Precise regulations governing the use of force and firearms are thus required, as is ensuring the possibility of pursuing those responsible beyond national borders. Brazil has regulations requiring training in the use of gradual and progressive force in order to preserve the physical integrity of persons confronted with the use of force during private security activities, in accordance with United Nations principles of human rights. The Working Group recommends this as a good practice.

127. The research also indicates that there are serious regulatory gaps concerning the illegal acquisition of weapons and trafficking in arms by private military and security company personnel and their consequences, and there are divergent approaches regarding the use of force and firearms. The example of El Salvador, involving making weapons, ammunition and other equipment available to the national police in the event of a strike or legal stoppage of private security services, is a recommended good practice at the national level. An international convention would provide for private military and security company personnel some standard rules and methods for acquiring, exporting, importing, possessing and using weapons and would ensure that the staff of private military and security companies are held accountable for the illegal acquisition of weapons, trafficking in arms and prohibited use of force in all parts of the world.

128. In general, across regions, legislation lacks references to company or personnel compliance with the standards of international human rights law and humanitarian law, penal accountability and civil liability of individuals and corporate actors, as well as effective remedies to victims. Given the right of victims of human rights violations to effective remedies, the lack of relevant rules results in ineffective regulation of the private security industry. An international convention would ensure the accountability of private military and security companies by providing standardized and effective accountability mechanisms. Such mechanisms would also ensure the enforceability of the regimes regulating the activities of private military and security companies, as well as the necessary penal accountability and civil liability of both individuals and corporate actors for human rights violations.

129. The weaknesses of the systems of selection and background checking, as well as the training of operational personnel, make more difficult for them a good understanding and internalization of legal norms and principles. In order to deal with these challenges, standards for evaluating activities that go beyond mere compliance with formalities must be established, instilling respect for rights and concrete

infractions with their respective sanctions. Selection procedures and background checks must be improved, with specific reference to international human rights and humanitarian law in the selection criteria, and training requirements that meet the minimum standards of duration and with particular content on human rights.

130. **While in general States have detailed regulations on private security services, the relevant laws do not include any references to a single dedicated body responsible for licencing and monitoring the activities of private military and security companies, or specific rules on the content of monitoring activities and inspections.**

131. **The Working Group reiterates its view that a comprehensive, legally binding international regulatory instrument is the best way to ensure consistent regulation worldwide and adequate protection of the human rights of all affected by the activities of private military and security companies. The Working Group emphasizes the critical need for States to establish minimum international standards to regulate the activities of private military and security companies and their personnel in pursuing the realization of these fundamental human rights, in accordance with international human rights and humanitarian law standards. An international convention would provide a standard regulatory framework and single dedicated body on various essential issues related to the activities of private military and security companies, ensure the accountability of private military and security company personnel, and guarantee the right to effective remedies of all victims worldwide. The provisions of an international convention on licensing, authorisation, selection and training of private military and security personnel would contribute to the establishment of common and consistent regulation that is desirable to ensure effective scrutiny of the conduct of private military and security companies and the implementation of the necessary international human rights standards, as well as to ensure the accountability of private military and security company personnel for violations of the law.**

132. **Further research into national regulatory strategies is clearly needed in order to identify trends, gaps and good practices in regulating private military and security companies. To this end, the Working Group encourages Member States that have not yet responded to its request to share with it laws and regulations relating to private military and security companies to do so.**

133. **In this study, the Working Group observed that only five of the countries studied have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and that only one of them, Peru, prohibits the activities of mercenaries domestically. The Working Group calls on the countries that are parties to this convention to incorporate the prohibition of those activities into their domestic legislation.**

134. **The Working Group also encourages Governments in these regions to promote discussion on the role of private security companies in the context of regional security into the agendas of intergovernmental, regional and subregional organizations.**

United Nations A/HRC/30/34/Add.1

General Assembly

Distr.: General
17 August 2015

Original: English

Human Rights Council
Thirtieth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Addendum

Mission to Côte d'Ivoire (7–10 October 2014)* **

Summary

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Côte d'Ivoire from 7 to 10 October 2014 at the invitation of the Government. In accordance with its mandate, the Working Group gathered information on mercenaries and mercenary-related activities as well as the effects of the activities of private military and security companies on the enjoyment of human rights. It met with the Ivorian authorities, as well as representatives from foreign embassies and civil society organizations, to discuss the positive initiatives that had taken place since the 2002 armed conflict and the post-election crisis in 2010.

* The summary of the present report is circulated in all official languages. The report itself, which is annexed to the summary, is circulated in the language of submission and French only.

** Late submission.

GE.15-13876(E)

Please recycle

The Working Group commends the Ivorian authorities for the number of positive initiatives that have been undertaken to help move the country forward and to deal with security threats such as mercenarism. Various reforms have been made to strengthen the security institutions, and the Dialogue, Truth and Reconciliation Commission, the National Commission of Inquiry and a special investigation unit focusing on receiving complaints related to the post-election crisis have been established. The creation of the National Human Rights Commission has also been positive. Furthermore, considerable efforts have been made to harmonize national legislation in order to bring it into compliance with international human rights standards, including the ratification of the Rome Statute of the International Criminal Court to strengthen the investigation and prosecution of perpetrators of violations during the post-election crisis. Efforts have also been made to address the proliferation of arms in the public domain.

Notwithstanding the positive initiatives made, serious human rights challenges remain. The Working Group is concerned about the widespread lack of confidence in the justice system and the prevalent culture of impunity for perpetrators of human rights violations. During its visit, the Working Group was informed that mercenaries had been recruited by both sides to the conflicts and had been responsible for grave violations, including mass killing, rape, torture, enforced disappearance and abduction. Children had been recruited to fight alongside mercenaries. Other armed perpetrators of violations have included local militia on both sides and *dozos* (traditional hunters), who have fought in support of the current regime.

Despite widespread information on violations, there has been little progress in the prosecution of mercenaries or other armed actors in Côte d'Ivoire or in their countries of origin. Those who have been convicted have mostly been associated with the former regime; there have been no convictions of perpetrators close to the current regime. The Working Group emphasized the need to combat impunity and strengthen access to effective legal assistance and remedies for victims in order to achieve lasting stability and reconciliation. Political divisions and polarization have continued to hinder successful reconciliation and nation-building efforts.

The Working Group also looked into the activities of private security companies and the role they played during the conflicts. It noted the huge increase in private security companies after the conflicts and the existence of hundreds of such companies operating illegally in the country. The proliferation of arms and the fact that private security personnel have access to weapons are issues of concern. Weapons need to be effectively controlled and managed.

The Working Group made recommendations, including to improve access to effective justice and remedies for victims and to end the culture of impunity by bringing perpetrators to justice regardless of their political affiliations. It urged the Government to ensure the protection of victims and witnesses who wish to engage in the judicial process concerning the past conflicts. It recommended that the Government urgently adopt the law on human rights defenders and the law on the protection of victims and witnesses, and that it address and counter the disturbing violence in the country involving gangs of young people and against women and children. Regarding private security companies, the Working Group made several recommendations, including the strengthening of oversight of operations and the establishment of redress mechanisms for victims of human rights violations.

Annex

[English and French only]

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to Côte d'Ivoire (7–10 October 2014)

Contents

		Page
I.	Introduction	4
II.	Legal framework	5
III.	Historical context: 2002 and 2010 armed conflicts	5
IV.	Mercenarism and human rights violations	6
V.	Positive initiatives	7
VI.	Ongoing challenges to national stability	7
	A. Impunity and lack of accountability	8
	B. Lack of access to justice and remedies for victims	9
	C. Threats to lasting national reconciliation and security	10
VII.	Private security companies	14
VIII.	Conclusion and recommendations	16

I. Introduction

1. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Côte d'Ivoire from 7 to 10 October 2014. The visit was conducted at the invitation of the Government. In accordance with its general practice, the visiting delegation comprised two members of the Working Group (Patricia Arias, as Chairperson-Rapporteur for 2014, and Anton Katz), as well as staff of the Office of the United Nations High Commissioner for Human Rights and United Nations interpreters. The visit was organized with the assistance and support of staff of the United Nations Operation in Côte d'Ivoire (UNOCI).

2. Pursuant to Commission on Human Rights resolution 2005/2 and Human Rights Council resolutions 24/13 and 27/17, the Working Group monitors mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world and studies the effects of the activities of private companies offering military assistance, consulting and security services on the international market on the enjoyment of human rights, particularly the right to self-determination.

3. In the present report, the Working Group uses the term "mercenary" as it is defined in article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, namely, to describe any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party; (c) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (d) is not a member of the armed forces of a party to the conflict; and (e) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

4. The right to self-determination is recognized in Article 1 (2) of the Charter of the United Nations as a fundamental principle and necessary for the achievement of universal peace. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which Côte d'Ivoire has ratified, also recognize that all peoples have the right to self-determination and that, by virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development. The African Charter on Human and Peoples' Rights refers to the right to self-determination as "unquestionable and inalienable". The Working Group has consistently recognized that mercenarism and mercenary-related activities pose grave threats to the right of peoples to self-determination and to the peace and security of developing countries, particularly in Africa and in small States.

5. In the present report, a private military and/or security company is understood to be a corporate entity that provides, on a compensatory basis, military and/or security services by physical persons and/or legal entities.

6. During its visit, the Working Group was not able to travel outside of Abidjan to the areas bordering Liberia or to other provinces where armed attacks by mercenaries had taken place, owing to the Ebola crisis in the region.

7. In Abidjan, the delegation was able to meet with the following representatives from the executive, legislative and judiciary branches of the State: the Minister to the President in charge of defence; the Minister of the Interior; the Director of Security within the Ministry of the Interior; staff from the Ministry of Foreign Affairs and the Ministry of Justice, Human Rights and Public Freedoms; the Prosecutor of the Court of First Instance

of Abidjan; the Prosecutor General at the Court of Appeal of Abidjan; representatives of the National Assembly; the Director of the Authority on Disarmament, Demobilization and Reintegration of former combatants; the General Controller of the National Commission to Combat the Proliferation and Illegal Movement of Small Arms and Light Weapons; the Division Commissioner responsible for the decisions coordination operational centre; the Director General of the National Police; the Senior Commander of the National Police; the Commissioner of the Military Court; the Chief of the Army; and the Chief of the Gendarmerie. The Working Group also met with representatives of the National Human Rights Commission.

8. The Working Group was able to meet with members of staff of various United Nations agencies, as well as representatives of the diplomatic community, civil society organizations and private security companies operating in the country.

9. The Working Group would like to thank the Government of Côte d'Ivoire and the staff of UNOCI for the valuable cooperation and support given during the visit. It also wishes to thank all of those who gave their time and made the effort to meet with the delegation.

II. Legal framework

10. Despite its turbulent past, Côte d'Ivoire has made considerable efforts to harmonize its national legislation with international human rights agreements. It has ratified several of the core international human rights treaties, including the International Covenant on Civil and Political Rights and the Rome Statute of the International Criminal Court, thus undertaking to uphold international obligations in respect of international crimes. It has also ratified the African Charter on Human and Peoples' Rights.

11. The Constitution of Côte d'Ivoire gives supremacy to ratified international agreements and gives due regard to human rights. However, it has yet to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and is only a signatory to the African Union Convention for the Elimination of Mercenarism in Africa.

III. Historical context: 2002 and 2010 armed conflicts

12. After gaining independence in 1960, Côte d'Ivoire enjoyed a period of peace and economic progress under the leadership of Félix Houphouët-Boigny. It became a popular destination for migrants from neighbouring countries, such as Burkina Faso and Mali. After the death of Houphouët-Boigny in 1993, intense rivalry for power within political circles began to affect national stability.

13. In 1999, the country experienced its first coup d'état. In 2000, a constitutional referendum was held to bring about changes that would require both parents of presidential candidates to be born in Côte d'Ivoire, effectively disqualifying candidates such as Alassane Ouattara, who hailed from the north of the country and who had family ties to Burkina Faso. The controversial referendum politicized ethnic identity under nationalist and xenophobic slogans such as *Ivoirité*, supported by politicians such as Henri Bédié and, later, Laurent Gbagbo. *Ivoirité* and continuous discrimination against immigrants such as those from Burkina Faso contributed to the growing tensions that triggered the conflict of 2002.

14. In 2002, war broke out and violent attacks occurred in major cities. The country became divided between north and south. Government forces headed by Laurent Gbagbo

were mostly situated in the south of the country, while the rebel forces supporting Ouattara, which aimed to occupy various cities, were mostly based in the north. Forces involved in the conflict included the national army, youth organizations and other nationalist groups siding with Gbagbo, while the Forces armées des Forces nouvelles were part of the rebel group, along with *dozos* (traditional hunters). Mercenaries from neighbouring and other countries were recruited by both sides to the conflict, along with local militia or civilian combatants, to fight in the war. Scores of human rights violations were perpetrated by these mercenaries, including summary executions, abductions, torture and sexual violence against women. After a series of violent clashes, the conflict finally came to a standstill in 2007 with the signing of the Ouagadougou Peace Agreement.

15. Peace for the country, however, was short lived. After the 2010 presidential elections, clashes between Gbagbo and Ouattara supporters broke out in various parts of the country, leading to a second civil war. The main cause of the conflict was the refusal of Gbagbo to concede victory to Ouattara. Once again, mercenaries were recruited to engage in the second conflict. Like in the first conflict, mass murders and widespread human rights violations were committed by both sides, resulting in hundreds of killings and other atrocities. The conflict came to an end in April 2011 with the arrest of Gbagbo. An estimated 3,000 people died in the violent clashes that took place over a period of five months.

IV. Mercenarism and human rights violations

16. The Working Group met with various interlocutors who spoke of the involvement of mercenaries during both conflicts. The porousness of the borders of Côte d'Ivoire facilitated the recruitment and use of mercenaries in the conflicts. An estimated 4,500 mercenaries were reportedly recruited to fight in both conflicts in Côte d'Ivoire, with a large number coming from the west, where the country borders Liberia, and from other countries, such as Burkina Faso and Angola.

17. The recruitment of a large number of mercenaries has been mostly associated with the pro-Gbagbo side. Gbagbo was reportedly using government funds to bring in mercenaries and local militiamen to bolster the national armed forces and the Young Patriots, to fight together against the rebels from the north. The Working Group was informed that mercenaries from Belarus were hired by Gbagbo for training purposes and to carry out technical functions. In addition to receiving financial payments, mercenaries were also reportedly supplied with armour and weapons.

18. The rebel forces comprised the Forces armées des Forces nouvelles and *dozos*, who fought against Gbagbo troops. The Working Group was informed that the rebel forces had also recruited mercenaries from neighbouring countries, such as Burkina Faso and Liberia. In March 2011, President Ouattara established the Forces républicaines de Côte d'Ivoire by merging the national army and the Forces armées des Forces nouvelles.

19. At the onset of the post-election crisis, clashes between Gbagbo troops and the Forces armées des Forces nouvelles rebels took place in the western province of the country and made their way to Abidjan, Yamoussoukro and other towns. Youpougon was a Gbagbo stronghold where mercenaries were involved in intense fighting between the two sides to the conflict around April 2011. From April onwards, and particularly after the arrest of Gbagbo, the Yopougon district became a principal place of warfare between the two camps. Large numbers of mercenaries also attacked communities in various areas, such as Duékoué and Toulépleu in the west, where mass killings of people occurred as a result of the confrontations between pro-Gbagbo forces and the Forces républicaines.

20. The Working Group received much information on the human rights violations committed by mercenaries and other armed groups, including extrajudicial killings, rape, torture, enforced disappearance and abductions as well as pillaging and arbitrary arrest and detention. Other accounts also highlighted the high number of gross violations against women and children, including sexual violence, such as female genital mutilations. The use of child soldiers by both sides of the conflict also took place in huge numbers. Violence was instigated against United Nations officials and foreign nationals residing in the country. In the aftermath of the crisis, hundreds of thousands of people were internally displaced and could not return to their homes. Properties were also occupied by hostile persons, including security forces.

V. Positive initiatives

21. In spite of its difficult past with two civil wars in just over a decade, the Ivorian authorities have made significant progress in reinstating the rule of law and State institutions and mechanisms to address the challenging aftermath of the conflicts.

22. At the forefront of the initiatives is the establishment of the Dialogue, Truth and Reconciliation Commission to assist in achieving reconciliation for Ivorians, as well as the National Commission of Inquiry to aid in receiving complaints on violations that took place during the conflicts. The Working Group was informed that over 65,000 victims of the Ivorian conflicts had been heard by the 37 local commissions of the Dialogue, Truth and Reconciliation Commission. The reinstatement of judicial structures has been gradual but, given that most of those structures were destroyed during the post-election conflict, this is a welcoming work-in-progress. The ratification of the Rome Statute to allow for referrals to the International Criminal Court where necessary has also been a positive step in bolstering the judicial mechanisms to deal with the past conflicts.

23. Progress has also been made by the Government in the establishment of the Authority on Disarmament, Demobilization and Reintegration of former combatants, which is supported by UNOCI. This programme assists with the disarmament, resocialization and training of former combatants and their reinsertion into society. The creation of the National Commission to Combat the Proliferation and Illegal Movement of Small Arms and Light Weapons is also a significant step in strengthening the control of small arms and light weapons and is a positive effort towards disarming civilians and collecting light weapons in the public domain.

24. The Working Group commends the Government for the establishment of the National Human Rights Commission, which has the mandate to promote, protect and defend human rights in the country, but notes that the independence of that institution needs to be strengthened and that adequate resources need to be provided for the Commission to fully carry out its functions.

25. The Working Group was informed of the creation of a special investigation unit under the Ministry of Justice to look into the violations that had taken place during the post-election crisis. The special unit comprises various entities, including from the police and gendarmerie, and can bring about proceedings and carry out specific missions in the field as part of its investigation procedure. It also maintains a database of cases of violations. Approximately 100 cases relating to mercenaries have been registered in the database.

VI. Ongoing challenges to national stability

26. The phenomenon of mercenarism thrives in conditions where the rule of law is weak, State institutions are fragile and political instability is rife. Given the country's

history of armed conflicts and the existing threats to national security, the Ivorian authorities will need to address the challenges below in order to safeguard against the recurrence and expansion of mercenarism and mercenary-related activities.

A. Impunity and lack of accountability

27. The Working Group was repeatedly informed that many Ivoirians lacked confidence in their justice system, particularly in relation to bringing to justice perpetrators of violations committed during the past conflicts and ensuring access to remedies for victims of violations. It was also perceived by many that judicial actions had been aimed at only one side to the conflict and that the justice system had double standards. Regarding mercenarism, one interlocutor stated that the question of mercenaries was sometimes considered a taboo question because the issue was caught between those who were currently in power and those who had been in power before. The Government, following the mission of the Working Group, also stated that there were two types of judicial proceedings: those relating to economic offences, and those for blood crimes. In its 2012 report, the National Commission of Inquiry stated that both sides to the conflicts had committed serious human rights violations. Despite this, the focus has been on convicting perpetrators who supported the former Gbagbo regime. The Working Group was not informed of any judicial processes or prosecutions relating to perpetrators who supported the current regime. In fact, former combatants close to the current regime have been given positions of authority in the Government, thus worsening the problem of impunity.

28. The low number of prosecutions and convictions of perpetrators involved in the past conflicts is striking. The Working Group noted that, despite the well-known presence of mercenaries on both sides to the conflicts, very little headway had been made in bringing them or those who were responsible for their recruitment to justice. Judicial processes have been slow in dealing with complaints of human rights violations, and the independence of State institutions, including the judiciary, requires strengthening in the light of the power held by the current regime, certain members of which were also former combatants.

29. The special investigation unit tasked with bringing to justice perpetrators of violations committed during the post-election crisis, although a critical mechanism, faced problems in the form of constant changes to its presiding judges. It was also understaffed and its investigative functions needed to be strengthened to prevent impunity. The Working Group is pleased, however, that the mandate of the unit has been extended.

30. The Working Group was informed of several incidents of the use of excessive force by elements of the Forces républicaines, which poses threats to human rights, including the rights to life and security of civilians. The number of alleged Forces républicaines perpetrators facing prosecution remains low, contributing to impunity and weakening public confidence in the security sector. The Working Group received information that training on human rights standards had been undertaken by the Forces républicaines to improve this problem but that it had not effectively addressed the overall situation. Forces républicaines elements have also been responsible for illegally occupying residential properties by force, leaving owners without homes. To date, more than 600 properties continue to be occupied.

31. The ratification of the Rome Statute by Côte d'Ivoire after the post-election crisis is positive and has provided an avenue for the International Criminal Court to cooperate closely with the Ivorian authorities in processing cases relating to the post-election crisis. The cases of Laurent Gbagbo and the Young Patriots leader Charles Blé Goudé are currently before the International Criminal Court tribunal at The Hague. During its visit to Côte d'Ivoire, the Working Group was informed of the presence of Court officials in the

country as part of ongoing investigations into the past conflicts and it hopes that existing collaborative efforts will assist in bringing to justice those who were responsible for human rights violations regardless of which side of the conflict they fought on. During the preparation of the present report, the Working Group was informed of the conviction of Simone Gbagbo for her role in the past conflicts. Seventy-nine people have also been tried for their role in the post-election crisis. The Working Group welcomes the continued cooperation of the authorities with the International Criminal Court mechanism as a step towards ending impunity. However, it notes the importance of ensuring that investigations and prosecutions by the Court also extend to perpetrators who are associated with the former regime.

Extraditions related to armed attacks

32. Trials related to mercenaries in the Ivorian crisis have also been under way in neighbouring Liberia, where the crime of mercenarism is stipulated in the Criminal Procedure Code. Mercenarism is not specifically stipulated in the criminal laws of Côte d'Ivoire.

33. The Working Group was informed of former combatants who have been held in prolonged preventive detention. Most of the detainees were associated with the former regime. The Working Group is concerned that some of the individuals have been in pretrial detention for as long as three years. Around 250 individuals were reported to the Working Group to be in pretrial detention.

34. In June 2012, a magistrate court in Liberia authorized the extradition to Côte d'Ivoire of 41 Ivorian detainees who had been in detention since April 2011. The individuals were suspected of having been involved in the post-election violence and some were also accused of war crimes. The Working Group was informed of several problems concerning the extradition process between the two countries. At least 11 of the 41 detainees had apparently presented formal requests for asylum, which had to be processed by the Court before extradition could be authorized. An appeal was made by the detainees' lawyer against the decision but the extradition was carried out anyway. The detainees were charged in Abidjan with offences that included genocide, crimes against the civilian population, murder, assassination, crimes against prisoners of war and assault and battery. The detainees were then placed in preventive detention and transferred to various locations throughout the country.

35. The Working Group was informed of six persons who were arrested in Liberia in October 2012, five of whom were Ivorians. The Ivorian authorities addressed the extradition request for the six suspects, who are currently in preventive detention in Abidjan. The cases of the individuals are being dealt with by the special investigation unit.

B. Lack of access to justice and remedies for victims

36. Access to justice, as well as remedies and effective redress, not only remains an immense challenge for victims of the conflicts, but also contributes to the pervasive impunity and lack of accountability associated with the justice system. The Working Group received information that many victims had not been able to bring their cases to court.

37. The Working Group observed the need to disseminate information and educate victims on their rights and the available services to facilitate access to justice. Legal aid is provided by the State but victims were not always able to access this service, particularly if they resided in remote areas away from legal aid centres. Vulnerable victims, such as women and children, often faced difficulty in seeking assistance, particularly when their cases involved sexual violence. A culture of shame and silence made it extremely difficult

for victims to bring their cases forward. Costs associated with trying to provide information and build a case for victims also hindered access to justice.

38. Ensuring access to justice and remedies for victims requires that they be treated fairly and impartially irrespective of their political or ethnic affiliation. Furthermore, the fear of reprisals and a lack of safeguards for victims has made seeking redress problematic. Robust protection measures for victims and witnesses, as well as judicial officers to ensure the independence of their work, are needed. The Working Group noted the need to provide appropriate and just reparation for victims as well as services to help them deal with the physical and psychological trauma they have suffered.

39. The Working Group was informed of a critical draft law on the protection of victims and on witness protection in judicial proceedings that had yet to be adopted by the authorities. In its debriefing with the Government, the Working Group urged the prompt adoption of the law to strengthen protection of victims or witnesses involved in judicial processes.

C. Threats to lasting national reconciliation and security

1. Cross-border activities

40. Having geographically delimited borders is a foreign concept in Côte d'Ivoire. Ivorians and citizens of neighbouring countries such as Liberia have traditionally moved freely in and out of Côte d'Ivoire, in part because relatives live side by side on both sides of the border. Despite increased attempts to strengthen border monitoring, control and management, Ivorian authorities continue to face challenges in curbing cross-border criminal activities, including mercenarism. The borders of the country remain porous and corruption by border control agents has been reported as a persistent problem.

41. Armed attacks took place in 2012, 2013 and 2014, underscoring the volatile security situation in the country. Towns located along the Liberian border such as Grabo and Fété experienced an armed attack early in 2014. Several months later, another attack resulted in 10 deaths, including children and members of the Forces républicaines. Sixteen individuals from Liberia, Sierra Leone and Ghana who were allegedly involved in the attack were arrested on their way to Ghana. They were later released owing to lack of evidence.

42. After the post-election crisis, combatants supporting the Gbagbo regime fled to neighbouring countries, where some remain in exile. The Working Group received reports of numerous attempts to destabilize the country by prominent Ivorians who supported the former regime and who reside in Ghana. This has affected the diplomatic relations between the two countries. The Working Group also received information that the Ivorian diaspora continues to fund and support activities such as the hiring of armed elements, including mercenaries, to destabilize the current Government. The border between Côte d'Ivoire and Guinea also continues to pose challenges for border security forces and the Forces républicaines.

43. In this respect, the Working Group discussed the need for strong regional cooperation and continuous collaboration among countries of the Economic Community of West African States (ECOWAS) to improve oversight and control of cross-border activities. This is particularly required as a strategy to combat and prevent mercenarism and related activities.

2. Political partisanship

44. The Working Group notes the continuing political divide within Côte d'Ivoire and the adverse effects this has on reconciliation efforts. The lack of real and meaningful

engagement among political parties and the competition for the presidential elections to be held in 2015 have hampered rather than enhanced the reconciliation process. Much of the political dialogue continues to centre on pro-Gbagbo or pro-Ouattara sentiments despite the many efforts to enhance reconciliation and deal with the aftermath of the past crises.

45. The recent armed attacks, allegedly by mercenaries, and other external attempts to destabilize the country are also indicative of the prevalent political tension. The forthcoming presidential elections have intensified polarization and created fears of further instability.

3. Continuing threats of *dozos*

46. The presence of *dozos* in Côte d'Ivoire after the post-election crisis continues to threaten national security. *Dozos* are traditional hunters who belong to a brotherhood and are reported to have mystical powers. The Working Group considered the identity of *dozos* with interest, noting that, although some were Ivorian nationals who spoke a dialect that was common in northern Côte d'Ivoire, others were foreigners, normally from Guinea, Mali and Burkina Faso, who spoke a different dialect to that spoken by Ivorians. While there is a common practice dating back from before the crises of using *dozos* to guard neighbourhoods, homes and businesses, the role of dozos evolved significantly during the civil wars. *Dozos* fought alongside the Forces républicaines in support of the current regime and were reported to have committed scores of human rights violations between 2009 and 2013. They not only fought alongside the rebels, but also undertook functions normally attributed to elements of the State apparatus, such as the police and the gendarmerie. *Dozos* have been known to arbitrarily arrest and detain persons and were responsible for many killings, including in Duékoué and Kouibly, during the post-election conflict.

47. The Working Group is concerned about the information it received that *dozos* continue to exercise de facto governmental authority in the security sector. In some cases, *dozos* have even acted on the instruction or under the control of some elements of the security forces or the administrative authorities and were found within the national security apparatus of the State.

48. The Working Group is also concerned about the lack of prosecution of *dozos* who committed human rights violations during the conflicts and was informed that only two had been prosecuted through judicial proceedings. Their continued presence can have adverse effects on national security as well as on the process of national reconciliation.

49. The lack of control and oversight over the activities of these individuals could also lend credence to the allegation that they enjoy impunity owing to their close ties with the current government. The Working Group is further concerned that *dozos* continue to be armed with weapons other than their traditional ones. In the light of the national policy for disarmament and the dire need to limit the use of force to the State security sector, more efforts need to be taken to disarm *dozos*. There is a particular need for disarmament in cases of former combatants who actively engaged in the past conflicts.

50. *Dozos* were reported to be offering their services as personal bodyguards to a number of well-known personalities. Some are receiving significant financial payments for their services, prompting the Working Group to consider identifying them as "mercenary-related" actors given that some are foreigners and carrying out their function exclusively for monetary gain.

4. Weak State institutions

51. Security institutions continue to suffer from excessive politicization. The level of mistrust between those who served in the former army, police and gendarmerie and those who fought for the current regime is reportedly significant. While senior *comzones* (former

commanders and combatants) have been given official appointments within the State and security apparatus, the issue of parallel chains of command, notably between *comzones* and other Forces républicaines elements, constitute a major challenge to the development of an effective, cohesive and professional national army in Côte d'Ivoire. Furthermore, a number of *comzones* were reportedly perpetrators of human rights violations during the past conflicts yet have not been brought to trial, thus further compounding the problems of impunity and absence of impartial justice. A weak vetting process and gaps in training and discipline continue to be observed across the security and defence institutions.

52. In order to strengthen the judiciary, it is also important to ensure the protection of judicial officers and the recruitment of fair and impartial judges. Judicial offices were burned down and information kept on record could not be maintained, prompting the Working Group to recommend the consistent and systematic collection and analysis of data regarding the past conflicts, to facilitate the work of the judiciary and other investigative mechanisms. The Working Group was also informed of the deficiencies among law enforcement and the judicial system that hindered investigations and prosecutions.

53. Security concerns have also been associated with the slow progress of the national security sector reform process. Further to the endorsement of the national security sector reform strategy and the establishment of the National Security Council headed by the President, important steps have been made to enhance engagement with local authorities, civilian mechanisms and other national stakeholders in the process. However, the security sector reform activities continue to be mostly concentrated in Abidjan with limited impact at the local level. The lack of adequate resources and equipment of the police and gendarmerie in most areas except for Abidjan, Bouaké and Daloa is also hampering the forces' operational ability. While a national police reform plan was developed in 2013, it has not yet been officially endorsed by the Ministry of the Interior or implemented. The police vetting process, despite initial promising steps, has been placed on hold. The overall fragility of security and defence institutions has also had an impact on national engagement in regional security initiatives. Despite their commitment to the West Africa Coast Initiative to fight transnational crime, national authorities have not yet implemented the decree to establish a transnational crime unit.

5. Poverty and youth violence

54. The current socioeconomic situation, if not addressed effectively, could create further insecurity. The vulnerabilities of individuals such as young people, who have been consistently exposed to a culture of violence and who are also engaged in criminal activities as a result, need to be effectively addressed. During the past conflicts, many young people, including children, were recruited as combatants. Some of them were reported to have later become mercenaries given their extensive training and involvement in warfare. In what appears to be a vicious cycle of youth violence and a legacy of the post-election crisis, the Working Group was informed of the current phenomenon called "microbes", or germs, which refers to gangs of violent young people, including very young children. They are feared as they have committed offences that include killing, theft and other illegal activities. Most of these young people live in abject poverty. Child soldiers who were drawn into mercenarism were often from impoverished settings and there is concern that, given the current situation, this new phenomenon may thrive in Côte d'Ivoire.

6. Ongoing violence against vulnerable groups

55. The visiting delegation regularly received information from government officials and members of civil society about the disturbing trend of violence against vulnerable groups such as women and children. During both armed conflicts, mercenaries inflicted sexual violence against children and women, including female genital mutilation, as a

weapon of warfare. The report of the National Commission of Inquiry documented over 100 cases of sexual violence.

56. From 1 May to 30 September 2014, 120 cases of rape, including 29 gang rapes, were documented across the country. In total, 144 alleged perpetrators were tried and sentenced for lesser crimes such as indecent assault, while the others were released owing to lack of sufficient evidence since the victims had withdrawn their complaints and did not attend the court hearings. Impunity for sexual crimes remains a challenge and the shame and silence associated with this crime indicates that the number of victims could be higher.

57. The Working Group was informed of the newly launched national strategy for combating sexual and gender-based violence to address such problems as access to justice for victims, the effective application of the law and reparations for victims. The Working Group commends this effort.

7. Arms and weapons in the public domain

58. The Working Group was informed that, through the Authority on Disarmament, Demobilization and Reintegration process, an estimated 20,963 former combatants have been disarmed and demobilized as at July 2014. Women represented 7 per cent of this figure. Over 15,000 weapons, including grenades and rockets, have been collected, along with 570,903 rounds of ammunition. Undoubtedly, the disarmament, demobilization and reintegration operation has assisted in making civilian life safer for Ivorians.

59. However, despite the progress made in disarmament, there are still 40,000 former combatants in the general population who are armed and unemployed, constituting a major challenge to the targeted completion of the disarmament, demobilization and reintegration programme ahead of the presidential election in October 2015. The proliferation of small arms and light weapons in the civilian domain and the continued cross-border movements of armed groups have intensified the concerns over threats to national security.

60. The Working Group noted the need to ensure that former combatants are not absorbed back into occupations involving the use of force, for example by being recruited by the army or security companies. In this regard, screening and vetting regulations should be in place to ensure that those who have committed human rights violations should not be recruited into such professions. The Working Group also observed the need for an effective policy to recover weapons being traded illicitly.

8. Implementation of the demobilization and rehabilitation programme

61. In addition to receiving information on the disarmament and demobilization aspects of the Authority on Disarmament, Demobilization and Reintegration programme, the Working Group received information concerning problems regarding its resocialization and reinsertion aspects. Many former combatants were not able to participate in the programme and receive the benefits that it had to offer, such as medical and financial assistance and training to facilitate reintegration into the regular work force. The Working Group was informed that those who had benefited from the programme were former combatants affiliated with the current regime. As participation in the programme is voluntary, *comzones* were reported to be responsible for providing names of individuals who could go into the programme. These names, which were given to the Authority, reportedly belonged to relatives or persons who were not former combatants. This process gave *comzones* particular authority to select those who would be proposed for reintegration. The programme is scheduled to end in June 2015.

62. The claim that the disarmament, demobilization and reintegration programme was not impartial was refuted by the authorities, which pointed to a lack of resources and employment opportunities as the reason for the inability to reintegrate the large number of

former combatants and that political affiliation was not considered when selecting candidates for the programme. Of more than 60,000 former combatants, 7,000 were reported to have gone through the disarmament, demobilization and reintegration process. The Working Group stressed the importance of ensuring that the process is transparent and impartial.

9. Reprisals

63. In addition to being concerned about impunity and lack of effective justice for victims, the Working Group is concerned about reports that representatives of civil society organizations, including journalists, victims and witnesses to human rights violations during the conflicts, have faced reprisals for their roles in addressing the events that took place. Threats and intimidation against civil society representatives who spoke out against the current regime were commonplace. The enjoyment of certain freedoms, including of expression, opinion and assembly, has been restricted, and opposition parties were repressed both during Gbagbo's tenure and by the current regime.

64. The Working Group noted that reprisals made victims and civil society members reluctant to cooperate with the justice and human rights mechanisms dealing with the past conflicts.

65. On a positive note, the Working Group was informed of a bill on the protection of human rights defenders that was adopted by the Council of Ministers. The Working Group looks forward to its passage as a welcome and necessary initiative for ensuring legal protection for human rights defenders.

VII. Private security companies

66. In accordance with its mandate, the Working Group looked into the situation of private and military security companies operating in Côte d'Ivoire. It took note of the fact that most security operations in the country were led by domestic private security companies.

67. Decree 2005-73 regulates private security and guard companies in the country and grants oversight powers and responsibility to the Ministry of the Interior through the Directorate of Territorial Surveillance, along with support from the Ministry of Defence, the Ministry of Economy and Finance and the national police. The Decree prohibits private security personnel from performing certain activities, such as involvement in labour conflicts or related activities, or undertaking functions that overlap with the roles of the police or military, such as arresting and detaining persons and carrying and using firearms, unless permitted by the relevant government Ministry. However, the Decree does not mention the export and import of services or their extraterritorial application.

68. The Decree does not require a robust vetting process for private security companies, although inspections are carried out by the relevant government authority. There is no particular requirement for there to be a robust vetting process to ensure that private security personnel have not been involved in past human rights violations, nor is there any requirement to establish mechanisms of redress for victims in the event that violations do occur.

69. Despite there being regulations on private security companies since 2005, the Working Group found a number of discrepancies in how operations were actually carried out. The Working Group was informed of the various roles of such companies before the post-election crisis. In the lead-up to the crisis, a number of private security personnel became active in the political problems that triggered the violent clashes. They took sides in the conflict and some became combatants, motivated by both political allegiance and

financial gain. The delegation was informed that some private security personnel or combatants were currently participating in the disarmament and demobilization programme. During the conflict, some private security companies became influential owing to their ties to the former regime. One company reportedly took up surveillance operations for Gbagbo's side and another reportedly transported mercenaries throughout the country.

70. The Working Group observed that, after the past armed conflicts, there was a proliferation of private security companies in the country. It was informed that between 600 and 900 companies existed, most of which were operating in the interior part of the country, outside of Abidjan. The Ministry of the Interior gave the Working Group a list of licensed companies, which showed that only 64 such companies had received licences (as at October 2014). The delegation was informed of the ease with which an individual could start and operate a company without a licence. Some companies even began their operations and then later sought to obtain a licence. Licences were often rejected when the required criteria were not met. However, the Working Group was informed that, often, the decision to grant a licence was not transparent and rested merely on the discretion of the licensing commissioner. Normally, a group of five or six commissioners made decisions on the issuance of licences. Having a licence did not, however, guarantee that the company was being run in accordance with the law.

71. Private security personnel were often recruited on the basis of the company's needs and did not need to undergo any formal training. Personnel were often friends, relatives or persons in need of employment. Some form of training did take place in bigger operations, although it was provided haphazardly and did not emphasize human rights standards. The Working Group did, however, receive information that an estimated 10 private security companies had good and sound structures in terms of what was required by law.

72. The Working Group heard of a number of challenges related to the licensing procedure and regime. There were reports of corruption, particularly bribery of government staff who worked in the licensing department and whose assistance was needed to process licence requests. The Working Group consistently heard that the private security industry had expanded considerably because it was lucrative, raising concerns that, with profit as the main objective and without proper licensing and vetting mechanisms, human rights violations could be committed with impunity. The situation was viewed as particularly serious given that the allegation that private security company personnel were armed and could easily have access to heavy-duty weapons such as Kalashnikov rifles.

73. The Working Group received information that that the authority figures responsible for the licensing and oversight of the industry were themselves owners of private security operations, thus raising issues of conflict of interest and the need to have a more transparent system to regulate the industry.

74. The Working Group was concerned to hear that many former combatants had been recruited into private security operations and had access to weapons and arms in the course of their duties. It was also common to find private security personnel carrying out activities normally performed by the gendarmerie or the police, such as the arrest of individuals. Some private security operators stated that relying on law enforcement was often complicated given the lack of resources or even the lack of will to deal with crimes committed by private security companies. This meant that it was easier to take matters into one's own hands and track down burglars to recover stolen items, for instance. One operator reported that he had recovered stolen goods and money from a thief in the presence of gendarmerie officials, who were watching close by. Police officers were also said to operate as "freelancers", running their own private security operations in addition to performing their official functions. The conflation of functions between law enforcement actors and private security operators is a serious concern as it contravenes the law and is indicative of the lack of control and oversight over the private security industry. In this

context, where there is a blurring of lines between the private security operator and the law enforcement officer, illicit activities and human rights violations can occur with impunity.

75. The Working Group, in its dialogue with government authorities, raised the need to strengthen the oversight regime for private security companies, including to ensure that licensing is carried out in an effective and transparent manner with due consideration given to human rights and business and labour standards. Non-compliance with these rules can encourage criminal activities as well as human rights violations, as witnessed during the past conflicts. A system of accountability and remedies for victims of human rights violations or offences committed by private security personnel is fundamental and needs to be incorporated into law as well as practice. Effective inspections and controls need to be exercised over the illegal carrying of arms by private security personnel as this would further diffuse the security concerns associated with these operations.

76. The Working Group emphasizes that, given the violent past that Côte d'Ivoire has experienced and the prevailing culture of impunity for human rights violations, it is fundamental to curb the illegal operations of private security companies, particularly as their access to arms can continue to pose threats of further violence.

VIII. Conclusion and recommendations

77. **The Working Group reiterates its appreciation to the Government of Côte d'Ivoire for extending the invitation to visit the country in order to discharge the functions mandated by the Human Rights Council. The visiting delegation benefited from the Ivorian authorities' cooperation and willingness to engage in dialogue and discuss the country's difficult past.**

78. **The Working Group takes note of the many efforts and the progress that have been made to move the country forward in a difficult and challenging post-conflict situation. It commends the Government and its partners such as UNOCI for the initiatives they have undertaken to rebuild the nation and advance the reconciliation process.**

79. **The establishment of mechanisms to enhance reconciliation and investigate the past conflicts are fundamental to healing the wounds of the nation's past. The efforts made to ratify human rights treaties and to harmonize national legislation so that it conforms with international human rights standards have been important in strengthening the national legal framework to better address the challenges currently faced by Ivorians.**

80. **Despite the many positive steps taken by the Government, the Working Group raises serious concerns regarding factors that threaten to destabilize the country and reverse the progress that has been made in the past few years. It also notes that mercenarism thrives in conditions where the rule of law is weak, State institutions are fragile and political instability is rife.**

81. **Factors conducive to national instability in which mercenarism can flourish include the following: the failure to bring to justice perpetrators of human rights violations and the prevalent culture of impunity; the lack of access to effective justice and redress for victims; the discriminatory and politicized manner in which justice has been applied, focusing on perpetrators from the former regime and neglecting to prosecute supporters of the current regime; the prevalent political divide in the country; ongoing vicious cycles of violence; and the proliferation of arms in the public domain.**

82. **The Working Group reiterates that, without justice for victims, real and lasting reconciliation cannot be achieved.**

83. **In the light of the foregoing, the Working Group makes the following recommendations to the Government:**

(a) Consider developing national legislation to criminalize mercenarism and mercenary-related acts;

(b) Ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and the African Union Convention for the Elimination of Mercenarism in Africa;

(c) Strengthen ongoing cooperation with international and regional mechanisms, including ECOWAS, to combat mercenarism and mercenary-related activities;

(d) Increase efforts with ECOWAS and neighbouring countries to tighten border control and management;

(e) Ensure that all perpetrators, including mercenaries, are held accountable for past violations and are tried by a competent, independent and impartial tribunal, in compliance with international human rights standards;

(f) Ensure that anyone who is accused of involvement in a mercenary-related incident is treated in accordance with international human rights standards, in particular the right to be free from arbitrary deprivation of liberty and from torture and other cruel, inhuman or degrading treatment or punishment;

(g) Ensure that detainees are not discriminately charged and held in prolonged detention owing to their political affiliations and ensure the release of detainees who are being held beyond the duration required by law and without substantiated charges;

(h) Fully cooperate with the investigations of the International Criminal Court and other judicial mechanisms aimed at bring all perpetrators to justice for violations in the past conflicts;

(i) End impunity related to *dozos*, ensure that *dozos* are not carrying out State security functions and ensure the disarmament of *dozos*;

(j) Reduce vulnerability to mercenary attacks by promoting and strengthening the rule of law and State institutions such as the judiciary and law enforcement agencies and ensure that the independence of the judiciary is always respected;

(k) Strengthen the National Human Rights Commission and ensure it conforms to the Paris Principles relating to the status of national institutions for the promotion and protection of human rights, in respect of its mandate, composition, organization, functioning and independence;

(l) Ensure access to effective justice and legal remedies for victims of human rights violations committed by mercenaries and other armed actors in the past conflicts;

(m) Implement the recommendations made by the National Commission of Inquiry, expedite the Commission's fight against impunity and prosecute the perpetrators of serious violations of human rights committed during the past conflicts regardless of their political affiliations;

(n) Take measures to systematically collect and analyse data to facilitate access to justice and reparations for victims of the past conflicts;

(o) Continue the work that is currently being done to harmonize national legislation with international human rights standards and, in this respect, urgently adopt the laws on the protection of human rights defenders and the protection of witnesses and victims in judicial processes relating to the conflicts, ensuring their effective implementation;

(p) Include in its criminal law the definition of rape and other crimes of a sexual nature and intensify efforts to combat violence against women by implementing comprehensive laws prohibiting sexual and gender-based violence and by providing the necessary support to victims of such violence;

(q) Ensure continuous efforts to strengthen the process of national reconciliation carried out by the Dialogue, Truth and Reconciliation Commission and related initiatives;

(r) Intensify efforts to end the proliferation of arms and weapons in the public domain and strengthen support towards demobilization and disarmament; continue cooperation with UNOCI and other partners in this objective;

(s) Ensure that programmes such as that on disarmament, demobilization and reintegration are carried out in a transparent, impartial and democratic manner and that former combatants benefit from them irrespective of their political affiliations and ensure also that former combatants are not recruited into professions where the use of force is required and that those who have been involved in mercenarism or mercenary-related activities do not benefit from the disarmament, demobilization and reintegration programme;

(t) Consolidate the progress achieved in the field of human rights education and training by regularly organizing, with the assistance of the international community, seminars and awareness-raising workshops on human rights, particularly for members of the security forces and the judiciary.

84. Concerning private security companies:

(a) Take measures to strengthen the licensing regime to curb the expansion of illegal private security operations;

(b) Strengthen oversight of private security operations and ensure appropriate vetting systems to better prevent human rights violations and protect against the perpetrators of such violations;

(c) Ensure that former combatants are not recruited by private security companies, particularly where they are armed and the use of force is likely;

(d) Ensure that international human rights standards are incorporated into the training manuals of private security companies and that this becomes a standard requirement for licensing;

(e) Ensure that private security personnel do not carry out functions that are exclusively for State security apparatus;

(f) Carry out rigorous disarmament efforts targeted at private security personnel;

(g) Have an independent oversight mechanism to ensure that licensing authorities function without conflict of interest and are not unduly benefiting from the private security industry.